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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

SECOND SESSION

ON

S. 1014

TO INCREASE CIVIL MONETARY PENALTIES BASED ON THE EFFECT OF INFLATION

FEBRUARY 29, 1988

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1987

MONDAY, FEBRUARY 29, 1988

U.S. Senate,
Subcommittee on Oversight
of Government Management,
Committee on Governmental Affairs,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:10 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin and Lautenberg, ex officio.

Staff Present: Linda J. Gustitus, Staff Director and Chief Counsel; Larry Uhlfelder, Professional Staff Member; Frankie de Vergie, Chief Clerk; and Sean McAvoy, Minority Professional Staff Member.

OPENING STATEMENT OF SENATOR LEVIN

Senator Levin. Our Subcommittee will come to order.

We are here today to consider S. 1014, the Federal Civil Penalties Inflation Adjustment Act of 1987. This legislation would require automatic annual increases in civil monetary penalties to ensure that the penalties keep pace with inflation. There are over 400 penalties established by law that permit Executive Branch agencies to fine, through their own administrative proceedings, persons who violate certain laws. The amount of many of these penalties has remained unchanged for many years, despite the effects of inflation.

For example: The Fair Labor Standards Act imposes penalties not to exceed $1,000 for each violation of certain child labor restrictions. The penalty amount has not been increased since 1975.

The Federal Mine Safety and Health Act provides for penalties for violations of the Act that range from $20 to $10,000. These penalty amounts have not been increased since 1969.

The Occupational Safety and Health Act provides for fines of up to $10,000 for each violation of that Act. These penalties have remained the same since 1970.

The bill before us, which was introduced by my colleague from New Jersey, Senator Frank Lautenberg, would require that each agency annually adjust for inflation each civil monetary penalty under that agency's jurisdiction and then publish the revised penalties in the Federal Register. This bill also requires OMB to report on the civil fines or penalties imposed and collected across the Government, by each agency, each year.

Civil monetary penalties have been enacted into law to deter unwanted conduct. They send the message that if you do the crime, you are going to pay. The question Senator Lautenberg is raising is whether or not our failure to update these penalties significantly undermines this principle. If so, then this bill is one way we could remedy that situation. I commend Senator Lautenberg for tackling this problem in his usual creative and forthright way.

In addition, this bill would establish accountability within the Executive Branch for keeping track of the number and amounts of civil penalties imposed and collected. Like a business, the Government should have systems and procedures to properly account for Federal revenues and to evaluate the effectiveness of the Government's enforcement efforts.

Because there is no centralized accounting for the number and amounts of penalties imposed and collected, we cannot determine the exact amount of revenue generated by civil penalties. However, we have information that indicates that the amount is over $400 million a year. This is no small amount of money.

After Senator Lautenberg completes his testimony, I would like to invite him to join us for the balance of the hearing, if he is able, so that he can ask questions of our other witnesses. The other witnesses we will hear from today are from the Office of Management and Budget, the Department of Justice, Congress Watch, and the Building and Construction Trades Department of the AFL-CIO.

I look forward to hearing from all of our witnesses today and hope that the testimony presented will provide insight into the practicality and utility of Senator Lautenberg's bill.

Senator Lautenberg, whenever you are ready to proceed, we would be delighted to hear from you. Again, we commend you for your taking the initiative in this area. It is a very important initiative. It is a creative one, and there is obviously a problem that you have identified. We look forward to your testimony.

TESTIMONY OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

Let me express my thanks to you and Senator Glenn, Chairman of the Committee, and members of the Subcommittee, the other members and this fine staff work that we have seen here. You have been exceptionally cooperative, and I greatly appreciate it.

S. 1014, Mr. Chairman, is a straightforward bill. It is based on old-fashioned common sense. It has one major purpose, and that is to adjust for inflation the level of civil monetary penalties imposed under Federal law.

We in the Congress like to talk tough when we set penalties for violating laws. But all too often, once we enact the penalties, we forget about them. They get lost in the thick legal underbrush of the U.S. Code, never to be seen or heard from again.

Many of these penalties are designed to meet important public needs: to protect the environment, to ensure a safe workplace, to provide for transportation safety, and to ensure that consumers are protected from unsafe products.

The problem is that as these penalties sit on the shelf, inflation dramatically erodes their deterrent effect.

Because of inflation, for example, the prices for violating worker safety rule, consumer product safety standards, and pesticide control rules have all been reduced by about ⅔ since they were last set in the early 1970's.

If it were presented for a vote today, would the Senate approve a ⅔ cut in OSHA penalties, when workplace hazards persist? Would the Senate approve a 64 percent cut in pesticide control penalties, when we see more and more evidence of the risks they pose? The answer, I think, would be no. And yet inaction gives us the same result. We kind of dramatize it by showing in the chart what has happened since 1970 with OSHA penalties. They have shrunken by ⅔.

These are not isolated cases. According to a survey of the agricultural laws by the CRS, 40 percent of the penalty provisions were over 20 years old. Another 30 percent were over 10 years old.

In fact, many civil penalties are much older than 20 years. I have found several examples of penalties that date back over 60 years, to the 1920's or earlier. Take the penalties for violating reporting requirements in the poultry industry, or for violating certain stockyard regulations. They were both set in 1921, and they have not been raised since.

Prices since 1921, as a matter of reference, have increased over six times.

It just does not make sense that consumers have to cope with price hikes in everything from food to medical care, but those who violate the law do not have to.

It would be unrealistic to expect that Congress is going to regularly revise civil penalties. Congress strains each year to pass a budget and the required appropriations acts. And if we want to maintain the deterrent power of civil penalties and maintain compliance with the law, the best way to do it is to adjust the amount of the penalties automatically.

That is what this legislation does. It requires agencies to publish a schedule of revised penalty amounts each year. The new penalty levels would reflect the rate of inflation of the previous year. In the first year, adjustments would be made based on the increase in prices since the penalty amount was originally established. At any time, of course, the automatic adjustments could be superseded by the Congress.

Maintaining the deterrent value of civil penalties will mean safer products, safer travel, safer workplaces and a cleaner environment. It also will ensure that honest businesses will be treated more fairly.

After all, meeting the legal requirements for a safe workplace or for waste control often involves a substantial investment. And honest businesses are making that investment. Sometimes, though, their competitors are not. And with weak sanctions, they are getting away with it, operating at a lower cost for doing business.

As a society, we owe an obligation to the honest, law-abiding business. An obligation to make sure that its competitors cannot exploit weakened sanctions to gain an unfair competitive advantage. This bill will help us meet that obligation.

The consumer, the worker, and the honest businessperson, all will benefit by this bill. But there is one more major beneficiary, and that is the taxpayer.

Total fines, penalties, and forfeitures of the Federal Government in fiscal year 1986 topped $420 million, as you said. This does not include the many penalties collected under the tax laws, which generally are not identified separately from tax receipts themselves.

An interesting thing here, Mr. Chairman—and you mentioned it—is that there is certainly a vagueness about the amount of penalties, forfeitures that we do collect. Frankly, since I come out of the computer business, I think we ought to have a data base outlining every thing. Why shouldn't we know and see whether it does play a regular part in the revenue stream of Government? I think that once we determine that we want to establish a basis for raising these fines or establishing these penalties, rather, then we will have that clearly on record. And we will be able to look at it any time that we want to.

By periodically adjusting penalties for inflation, revenues should increase. And since the first adjustment would account for inflation from the time the penalty was originally set, the impact could be substantial. What could be an easier, more common sense way to help reduce the budget deficit?

Unfortunately, OMB maintained no detailed central account that tracks penalty assessments and collections and matches them with the laws under which they are imposed. There is no accounting of which laws need updating the most. Apparently, $400 million is seen as small change that is not worth watching more closely.

This bill requires OMB to maintain a central accounting of agencies' performance and collections. That way, Congress and the public would know whether the laws are being enforced and how much money is being raised from each penalty.

Mr. Chairman, I originally introduced S. 1014 last April. Since then, my staff has worked very closely with the Subcommittee's staff; and they have developed some technical improvements in the bill's language.

First of all, it should be made clear that the bill applies only to penalty amounts for which there is a fixed monetary amount, or a fixed range. Thus, for example, it would not apply to many tax penalties which are calculated as a percentage of taxes owed.

Secondly, the original bill provides that all adjusted penalties are to be rounded off to the nearest 10 dollars. I would suggest that larger penalties should be rounded off to larger numbers. Maybe even the 10 dollars is too small, but that is something that we ought to work on.

Other improvements also may be appropriate, and I want to express my willingness to work with the Subcommittee to help improve and refine the bill. It may be wise, for example, to consider making the inflation adjustments less than annual. Perhaps biannually or every 3 years is sufficient.

Also, it may be appropriate to give the agencies some discretion to provide for lower penalty adjustments if there is a compelling reason. I will be interested to hear the views of our witnesses on these issues and on other ways to perfect the bill's language or approaches.

The important goal in my mind is to set up some mechanism to ensure that civil penalties pack as much of a punch today as they did the day a resolute Congress passed them. I am convinced that this bill will mean enhanced deterrence, fewer violations, and more money in the Treasury.

Mr. Chairman, this bill has attracted support from a variety of groups, including several representing consumers, environmentalists, and organized labor. I would appreciate it if some of the letters from these groups could be included as part of the hearing record.

Senator LEVIN. They will, indeed, be made part of the record.[1]

Senator LAUTENBERG. Again, I want to thank you for holding this hearing. I will now be pleased to answer any questions that you may have, and I will gladly accept the offer to join you as the hearing continues.

Senator LEVIN. Thank you, Senator Lautenberg. The questions that I have for the most part you have already addressed, and that has to do with the desirability of some amendments that would make it clear that the bill does not apply, for instance, to certain IRS penalties—you covered that; the incremental rounding—you covered that. There are a number of other areas of concern which you have also addressed in your statement, including the question of whether we ought to do this annually or do it every third year or every fifth year.

The point that you are making is that we do it regularly and that we not allow this situation to occur again, where you have penalties that have been on the books for 5, 10, 15, 20 years and longer that get destroyed by inflation. I think that is the critical point. That is the heart of it. And if it turns out that we should do something regularly, but less often than annually, I take it from your testimony that you are open to that kind of suggestion.

So I have no questions at this time at all. I would be delighted if you would join us here.

The first panel is going to present the Administration's view on S. 1014. We have on this panel the Deputy Director of OMB, Joe Wright. Mr. Wright also serves as Chairman of the President's Council on Integrity and Efficiency.

Accompanying Mr. Wright today is Richard Kusserow, who is the Inspector General of the Department of Health and Human Services; and Vice Chairman of the President's Council on Integrity and Efficiency.

Also on our first panel is Stuart Schiffer—our label there in front of you has a misprint. We will take appropriate disciplinary action with our staff, unless they get me another cup of tea. [Laughter.]

We welcome you, Mr. Schiffer. You serve as a Deputy Assistant Attorney General in the Civil Division at the Department of Justice, and have served in the Civil Division in a variety of positions since 1963. And I believe that you are the Division's senior career official. You don't look that old, but it's an honor in any event.

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[1] See pp. 232-236.

We welcome all of you. Mr. Wright if you could proceed. We know you each have statements. And if you would summarize those statements, we will make them part of the record.

I have not had a chance to read them. If they are not that long, you can proceed with them as you wish.

TESTIMONY OF JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, AND CHAIRMAN, PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Mr. WRIGHT. Okay, thank you, Mr. Chairman. I understand that my statement got lost in the mail, or whatever it was. And I apologize for it, because we really had it finished a couple of days ago.

I would like to submit it for the record,[1] with your permission, and just summarize a few of the key points.

Senator LEVIN. Thanks.

Mr. WRIGHT. First of all, if I may, I would like to give to each of you gentlemen our management report for this year. It was just presented to the President at about 11:00 o'clock.

And Senator Lautenberg, you will be happy to see on page 34 is our update of the financial accounting systems, which I know has been a favorite project of yours.

And I believe GPO just opened up their sales of the management report, probably about 3 or 4 hours ago, so those are free.

Senator LEVIN. Is it already a best seller?

Mr. WRIGHT. Well, if you see on the back of it, it accepts credit cards. That's one of the projects we have got.

Now, in general, Mr. Chairman, I would like to say that not only do we appreciate the underlying objectives of S. 1014, but basically agree with them.

I think that it's a good piece of legislation that should be passed. We do have some reservations which we would like to share with the subcommittee and the committee, and work on with you.

As you know, a rough survey by Justice found the U.S. Code contains almost 400 civil penalties, some of which are civil monetary penalties or CMP's.

They range from the penalties under the False Claims Act to the penalties for false Customs declarations, customer information labelling violations, environmental threats, and so forth.

One of the problems that Senator Lautenberg mentioned is that we do not have a good management information system in this area. In part, when we put in the financial accounting systems, we ought to go ahead and establish a separate accounts receivable. Then, we can go ahead and report on it from now on.

And as you will see, Senator, we will have most of those financial account systems in place by the end of this year, going through next year.

Now, the HHS office of the IG is authorized to impose 48 separate civil monetary penalties in the health field alone. And I've got the Inspector General and also the vice chairman of the PCIE, Dick Kusserow, with me, and he can go into that in more detail.

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[1] See p. 39.

The reservations we've got with the legislation is that adjustments may not be called for in every case, but we don't know yet.

Second——

Senator Levin. Let me interrupt there. Are you saying even though a long period of time is past, right?

Mr. Wright. Mr. Chairman, what I am talking about are those areas where it appears that the penalty is working, or that a behavioral pattern has changed. It could well be that you actually want to pull back on the penalty.

And so all I would like to do is to just reserve that until we take a look at what the problems really are, what the penalties are, and how much they really apply to today's problems.

Second, I agree with you on the tax provisions and the concern there, because I believe you have got over 100 of these that apply in the tax area. And I believe that since 1982 Congress has already taken action to make revisions on these about four times.

So from that standpoint, I do not think we've really had enough time to really take a look at what the impact of those is going to be. And that could be an area that is not covered by this bill.

Third, the annual adjustments: I agree that that may be a little bit too often in this area. And in many cases, the administrative burden of making these adjustments may not be worth it.

Where there would be a 3- or a 5-year adjustment, I agree, but I think we really have to take a look at it.

And then, fourth, I would like to say that OMB may not be the proper place to do the cataloging and the reporting on this. I do have an option that I would to propose to the Subcommittee.

First action, I'd like to wait just a little bit and ask the President's Council on Integrity and Efficiency to do a survey of those CMP provisions that would fit within this bill that are under the jurisdictions of the statutory IGs.

Now, as you know, the statutory IGs cover about 90 percent of all of the spending in the Federal Government. We could do this survey very fast for the Committee. And I think we would have a good chance to establish what a catalogue is and to get more information on these CMPs, because we simply don't have it right now.

Senator Levin. When you say very fast, how long are we talking about ?

Mr. Wright. We would have it for you–we have already asked for it to be done by May 1st.

Senator Levin. May 1st?

Mr. Wright. May 1st of this year. This is for the statutory IGs, now within the PCIE. They have their information systems.

And we would turn this around for you very rapidly after that. As a matter of fact, we would be happy to work with your staff almost immediately.

I would like to submit also for the record a reporting option that we will do anyway, Mr. Chairman. It's not in lieu of necessarily the OMB. I think it should be. But if is one that we're going to start anyway.

We would like to do the survey, have it finished for you by May. The non-statutory IGs agencies will take a little bit longer. But on the reporting, we can include this in our President's Council on Integrity and Efficiency report. As a matter of fact, one just came out on Thursday.

And I will give a copy of each one of those to you gentlemen.

Mr. **Wright**. On page 15, we report on the suspension and debarments; on actions taken against individuals and entities doing business with the Federal Government. We will add a new column, which will pick up the CMPs on this.

And if I could put this in the record, Mr. Chairman, this is a memorandum that was sent out by Mr. Kusserow on Friday, instructing the Inspector Generals to begin this reporting.

So if I could submit this for the record.

Now, what this will do, is give us a good data base on which we can work with the subcommittee to make recommendations in this area.

This will also give us a good reporting mechanism, which you ought to look at. And if that's not sufficient, then we can talk about how we supplement it.

Finally it will give you a good ongoing basis to review these to make recommendations to the agencies as well as to the Congress as to what changes should be made.

On the study itself, I have put together the proposed study design and the sample questions, which I would also like to put into the record if I may. And if there are any of these that you would like to expand or change in any way whatsoever, we would be more than happy to make such change in the study design.

If I could include these for the record.

Senator **Levin**. It will be made part of the record.

Mr. **Wright**. And that for the most part is my testimony, Mr. Chairman. I would be happy to answer any questions after the rest of the panel has testified.

Senator **Levin**. Let us hear from the other panelists. Mr. Kusserow, do you have a separate statement?

TESTIMONY OF RICHARD P. KUSSEROW, INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND VICE CHAIRMAN, PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Mr. **Kusserow**. Yes, I do, Mr. Chairman. And let me just take up your offer and submit my full statement for the record.[1]

The first thing I would like to comment on is that Mr. Schiffer is not the senior civil servant at the table; I am. I am Inspector General for HHS, and I have 23 years of continuous service, and I am in a nonpartisan position now, so I am not part of the Administration.

Senator **Levin**. Well, one more mess up by my staff today, and that is it.

Mr. **Kusserow**. In short, let me just say that as the auditor for 38 percent of the outlays for the Federal budget, I have got to say that I think this bill is right on track.

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[1] See p. 47.

If it is intended to have a better accountability in the accounts receivable, especially as it relates to monetary penalties, then I think that we are currently unable to provide that kind of information. This is a material weakness in our accounting system, and should be immediately corrected.

Our department has roughly 300 programs. In the Reconciliation Act in 1981, Congress went ahead and passed a civil monetary penalty authority which subsequently was delegated to the Inspector General to enforce.

That penalty focused on health providers in the Medicaid and Medicare program who intentionally submit false or otherwise improper claims, as well as those who should know what they are doing is improper.

The civil monetary penalty law is a piece of legislation, clearly designed in its intent and implementation not to harass health providers who make an honest mistake, but to sanction those engaged in a pattern of abuse.

We have been making it a very effective tool. Basically what the CMD provision ensures is that in situations where there has been a material false statement made, and a claim has been paid out, the sanction's starting point is twice the amount of that claim plus up to $2,000 per item or service improperly claimed.

Today we have some 48 monetary penalty authorities that are assigned to the Inspector General to enforce. And there are several examples which I put in my prepared statement.

I would like to go back to that first CMP that we had in 1981. Regulations were implemented in 1983. It was originally predicted in the legislative history that when it was up and running at full speed it might generate as much as $700,000 per year.

In the first year of operation we collected, actually money in hand—that is, back to the government, back to the programs—$1.4 million. This last year, with just that one of the 48 penalties that we have, increased collections to $11.7 million.

The total since 1983 is somewhere around $45 to $50 million. So it has exceeded expectations of even the Congress. And we think it's a very, very useful tool for going after those kinds of cases which fall short of criminal prosecution for whatever reason, and yet constitute abuse of patient or program.

Among some of the notable cases that I gave in my statement was a hospital that agreed to pay $450,000 for improperly billing Medicare, Medicaid, and the Civilian Health and Medical Program of the Uniformed Services for in-patient psychiatric services rendered by nonphysicians.

In another case we had two anesthesiologists paid over $320,000 who had to make that much in penalties and interest and restitution for billing the Medicaid program and Blue Shield for services claimed to be personally performed when in fact they were performed by the hospital staff anesthesiologist.

Senator **Lautenberg**. Just a quick question: Are they also subject to criminal penalties?

Mr. **Kusserow**. Absolutely. That is the way it works, and in fact it was used as a model for this committee in developing the Program Fraud Civil Remedies Act. There are two ways that it works.

First, because the facts in evidence would not lend itself to successful criminal prosecution, the Department of Justice would defer for appropriate administrative action.

In a second category of cases where there has been criminal prosecution, there still remains unjust enrichment at the hands of the wrongdoer, and we can go in subsequent or concurrent with the criminal prosecution to seek recoveries.

In many cases it is in fact that latter category where the CMP is very valuable. Criminality has been established, but in a criminal case you don't always go after every dollar that was taken improperly. But under this provision we can get every dollar that they got in unjust enrichment.

It works both ways.

So basically what it comes down to is that we believe the concepts that are incorporated in Senate bill 1014 are really needed, and we think that having a system to raise penalties to keep pace with inflation is well worthwhile.

We also would share Justice's suggestion that it doesn't need to be done on an annual basis. It might get a little complicated. But adjusted around every 5 years, the penalty amount should keep pace.

So on the question of how frequent, we would probably lean more toward a 5-year update.

Also we would want to make sure that that would not preclude Congress considering a different kind of rate of escalation in penalties.

For example, when we first tried to implement the enforcement of the anti-dumping COBRA provision in Medicare participating hospitals, the penalty was $25,000 per case, where a patient was dumped out of the hospital before being stabilized.

We went back to the Congress and told them that it really would be better at $50,000 if you want to gain the attention of the hospitals, and indeed, you did accept that, and it is in the Omnibus Budget Reconciliation Act of 1987.

So we think that on occasion, on a case-by-case basis, we would still like to be able to come back to Congress and suggest that certain penalties be escalated.

I am saving for last what we think is one of the most significant pieces of legislation that has come out of Congress recently, and that is the Program Fraud Civil Remedies Act, which originated from this committee.

It really created for the first time an administrative monetary remedy that crossed program lines, and can be applied throughout much, if not all, of the Federal Government.

And it assigned in statute a major role to the Inspectors General to investigate cases of unjust enrichment arising from program fraud and abuse. And again, as is true with the civil monetary penalty legislation I alluded to that we got out of the Omnibus Reconciliation Act of 1981, PFCRA operates in lieu of criminal prosecution, where justice defers to us; or in conjunction with a criminal prosecution to recover unjust enrichment.

In the same report that Joe Wright cited to you, there is another section in there if I could draw your attention to it, on page 35 in the first appendix, which does actually refer to the Program Fraud Civil Remedies Act.

Congress built in an annual reporting requirement. In the first year, we're reporting on its implementation. From now on we will be reporting the actual dollars that are being generated by penalties levied as a result of this process.

And I would just reiterate from what Mr. Wright said that you could very easily put another column right along side of it for other monetary penalties in the department. And that wouldn't be that difficult to report to the Congress.

I would hope that if the Congress were to look at a study that our council might conduct, they might look at not only those penalties that are almost made meaningless as a result of inflation passing it by; but they might also look at whether we might want to do some standardization of penalties or definitions of due process.

They might even want lead time to consider some sort of sunset provision on those monetary penalties which don't seem to be working very well. Maybe they should just be eliminated.

So that concludes my testimony, Mr. Chairman, and I certainly would be pleased to answer any questions.

Senator LEVIN. Mr. Kusserow, thank you very much. Mr. Schiffer?

TESTIMONY OF STUART E. SCHIFFER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. SCHIFFER. Thank you, Mr. Chairman, Senator Lautenberg. I, too, will take advantage of your offer to include my prepared statement in the record.[1]

And frankly, I have very little to add to what Mr. Wright and Mr. Kusserow have stated.

I do want to join Mr. Kusserow in acknowledging the important role this Committee has played in strengthening the government's enforcement powers.

I just want to mention the Program Fraud Civil Remedies Act; the Anti-Kickback Enforcement Act that the chairman sponsored a few years ago is another example that we regard as a key measure, and one which, like the program fraud statute, contains civil penalties as an enforcement tool.

Civil penalties serve as a deterrent to a host of conduct and practices which are inimical to important societal goals and governmental objectives. In concert with other remedies they provide governmental agencies with much needed flexibility in safeguarding the programs to which they are addressed.

We well agree with the sponsor of this legislation that the mere passage of time in itself is often a sufficient reason for such statutes to be revisited and reviewed to ensure that remedies continue to serve their intended purpose.

We are aware of a number of occasions in the very recent past where precisely this has occurred. The False Claims Act is one area where it was long overdue. Revisions hadn't occurred for 120 years. But again, the last Congress addressed this.

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[1] See p. 55.

Other examples can be found in the safety area, the environmental area, and as Mr. Wright mentioned, in the tax area.

These reviews occur either at the initiative of the appropriate agencies which enforce the statutes, or at the initiative of the oversight committees themselves.

We have always found authorizing and oversight committees to be very responsive when we do suggest a need for revision.

In short, I join my colleagues in lauding the objectives of this legislation. We share the reservations which both Mr. Wright and Mr. Kusserow have noted. Those are set forth adequately in the testimony, and I won't dwell on them.

But I will be willing to answer any questions the Committee might have.

Senator LEVIN. Thank you, Mr. Schiffer, thank you for your help and the help of your division in the preparation of the statutes that you mentioned that we were able to put on the books.

I have a couple of questions. First, Mr. Wright, you indicated a timetable, and I want to make sure I heard you correctly.

You're asking for a review by how many agencies of the current practice?

Mr. WRIGHT. We have 19, Mr. Chairman, statutory Inspectors General that make up the President's Council on Integrity and Efficiency.

We would use the organization to review those 19 agencies.

Senator LEVIN. Now, would your overall review address anything more than those 19 agencies? Do you have to wait for information from the nonstatutory agencies?

Mr. WRIGHT. If we were going to do the nonstatutory agencies, it would probably take us a little bit longer, because they don't have the same ability to respond as quickly.

Mr. KUSSEROW. Also sometimes the independent regulatory agencies are less responsive to OMB on requests. So we would have to convince them that this is in their interests.

Senator LEVIN. Well, I am a little reluctant to delay this too long. However, I think that if we need to get more information, we should.

But I would hate to see us delay longer than we need to. And if we are not sure when Justice and Treasury, for instance, would report, because they do not have statutory IGs, I'm just wondering whether or not you are planning to give us the results May 1 even without those agencies reporting to you?

Mr. WRIGHT. Mr. Chairman, we can probably include Justice and Treasury in this. They do sit on the PCIE, although they are not statutory.

If we have a problem with it, or we foresee it, we'll let the Subcommittee know. But I think we probably can include them.

I am more concerned, as Mr. Kusserow said, with the independent regulatory agencies, that every once in a while we have a little bit of a hard time getting their attention.

Senator LEVIN. Now, can you inform Justice and Treasury that this Subcommittee, at least, intends to proceed with this, with or without their information, that we would do the best we can?

Mr. WRIGHT. I don't think they'll be a problem.

Mr. **Schiffer**. I should note, Mr. Chairman, that the Justice Department directly administers very few civil monetary penalties. We typically get involved only when they get into some sort of judicial process.

Senator **Levin**. Thank you, Mr. Schiffer, for correcting me. Will you let Treasury know, then, that we would like to proceed?

Mr. **Wright**. Yes, I will.

Senator **Levin**. So then what we have is your assurance that we will hear from you by May 1; is that correct?

Mr. **Wright**. Yes, sir. But we won't wait until that point. I will go on ahead and work with your staff on what we are coming up with between now and then.

Senator **Levin**. Well, that is what I would like to do. I think there is so much support for Senator Lautenberg's bill that we ought to proceed, not to mark it up, but just short of marking it up. We will wait for that one piece of information to come in so that we could mark this up shortly after May 1. I think that is the longest we ought to hold this up.

Secondly is the question of who determines the inflator. As I read the bill, it appears that each agency would use the formula in the bill to determine the inflator for that agency's civil penalties.

Is there a more centralized way that we could determine the inflator so that we don't have agencies coming up with different inflators?

These go back to, what, 1950s? 1960s? Would it be easier if the OMB just simply said, if your civil penalty goes back to 1951, this is the inflator?

So instead of every agency assigning personnel to figure out what that inflator is, just one chart could be put out by OMB; would that be doable?

Mr. **Wright**. Yes, Mr. Chairman, that would be doable. Can I hold back on a recommendation, though, as to who should do that? Because I would like to take it through the PCIE and get their recommendations on it.

It is possible that a lead agency for example like Justice might be in a better position than OMB.

But OMB is one alternative.

Senator **Levin**. Okay, could you jointly give us a recommendation as to the lead agency? I would like to talk to Senator Lautenberg at least about the possibility of having one agency come up with a table of inflators, so we don't have 20 agencies all doing exactly the same thing.

Mr. **Wright**. No, I know what you're talking about.

Senator **Levin**. Then, I'm wondering if the Justice Department could give me some legal advice.

Is there any problem here with each agency plugging into a statute what the new civil penalty is? Is there what we used to call in law school, excessive delegation of authority? No one looks at that much these days, but is there any delegation problem with this?

Mr. **Schiffer**. My advice may be worth what you paid for it, Mr. Chairman.

As I understand the bill in its present form, it contains a formula. And I think as long as a formula was being used, that is unlikely to be a serious problem.

Senator **Levin**. So what you're saying is, this is a ministerial act, and there is no discretion that we're delegating.

But would you check out that little qualm I have in my mind. Do we have to come back and amend every statute, is the question. Or can we delegate it, in effect, to each agency to amend the statute by what I presume would be, what, a rule or a regulation?

Let me ask you, Mr. Schiffer. You've got a statute that says the civil penalty is now $1,000. We've not decided nothing has happened since 1970. The inflator is 150 percent. So it ought to go up to $2,500.

How do you actually physically amend that statute so it reads $2,500 instead of $1,000?

Mr. **Schiffer**. Well, I think that is a very real problem. Whether it is of a constitutional dimension or not, I'm not sure.

Senator **Levin**. Well, give me the practical solution, as well as the constitutional assurance. How do we do it practically? How do we physically get that statute changed, so that we would do it by regulation?

Mr. **Schiffer**. I think the danger with the bill as it is presently written is that you might well end up with statutes that contain the terms themselves and the original dollar amount, and then you would have to look in the Federal Register each year. I am not sure how strong a deterrent that becomes.

I suppose if the statute provided in itself which monetary penalties were to be covered, it may well be that there is a mechanism to get the annual revisions into the notes to the United States Code.

But I think if not a constitutional problem, that is a very real, practical problem.

Senator **Levin**. Can you give us advice as to how we can actually change the code without legislating changes in the code?

For instance, could we in this bill prospectively amend the code to incorporate that ministerial act of adding an inflator to each civil penalty?

I would like you to give a little bit of thought to that. Because I do think we want to have a deterrent impact. And it may be easier if the code itself is actually amended.

Now, Senator Lautenberg may be able to help me out on this. But I think it would be better if we did it that way, rather than just simply having it in regulation.

The notice is better; it's clearer. And if we're going to do it that way this first time, maybe if we have to amend the darn code in each of those hundreds of sections once, maybe we also could amend those sections to say from this point on, folks, check your 5-year or your 3-year Federal Register to find out, before you commit the offense.

In other words, we might want to put a notice, a little asterisk, in these fines, saying that there is going to be a change automatically in this fine every three years, five years, whatever we decide to do. And we could do it all this one time, so the new figures in the code plus that asterisk warning people that every three or five years, whatever it's going to be, they better check the Federal Record.

I think, Mr. Schiffer, you're the right person to give a little thought to how we accomplish that. Would you let this Subcommittee know?

Mr. **Schiffer**. I will be happy to, Mr. Chairman.

Senator **Levin**. And let Senator Lautenberg know also.

Mr. **Schiffer**. This is one of the problems we have with this.

Senator **Levin**. This is an important goal. We ought to do it. I think we ought to take the time to do it right.

Mr. **Kusserow**. Mr. Chairman, if I may, let me point out another technical issue you might want to look at: Many times when we are applying monetary penalties, we have just discovered the problem. But we go back and look at the entire history of the problem, and it may extend back three or four years, we charge the penalties for all four years.

The next question I think that you might want to also look at is: What would be the rate at which you charge the penalty? The year in which it is levied? Or do you do it separately in each year for which the offense took place?

Senator **Levin**. And there is another problem in addition to that; is the penalty applied as of the date of the offense, or as of the date the penalty is imposed?

Now, that's probably been answered in law. And maybe Mr. Schiffer you can help us on that. Do we know the answer to that question?

Is it the penalty amount at the date of the violation or is it the penalty amount in effect as of the date the penalty is imposed?

Mr. **Schiffer**. In part it's often a question of what Congress says it is. And we run into the problem when Congress doesn't say.

Alluding to three of the statutes I mentioned earlier today, the last Congress passed the program fraud statute and the antikickback statute and provided that their provisions were to operate only with respect to conduct that occurred after the date of enactment.

The False Claims Act amendments were silent. We are arguing that the provisions are in effect retroactive, and that if a proceeding ensues today with respect to conduct that occurred prior to passage, the revised amounts apply.

We don't have any final decisions from the courts on that.

Senator **Levin**. I think we may also want to address that, too. The bill is silent; we may want to be explicit. Can you also then work with us on that issue, as to whether we want to be silent.

In any event, if you could give us some advice on that.

I have got some more questions. Senator Lautenberg.

Senator **Lautenberg**. Well, very briefly, since the Chairman is an attorney and looking at these, as I call them, juridical problems as well as the operational problems.

I look at it from my background, which is as a corporate executive. And I'm inclined to say, Mr. Chairman, that I would leave it to the staff of the Subcommittee, my staff, and the people that these folks have around them to figure out a way to solve the problem.

If we agree on the objective, if we think that it is sound to go ahead, and if these penalties were designed to be a deterrent, then let us make sure they are updated, as contrasted to someone possibly sitting back there and saying, hey, listen, we are better off to commit the violation; the penalty is insignificant.

I saw a penalty in here that was $10 a day for a violation of one of the labor standards. For $10 a day, that doesn't buy anything.

Before I go any further, I've got to ask, Mr. Kusserow, are you related to Lou Kusserow? He played football at Columbia when I was a student there.

Mr. **Kusserow**. When I was in the FBI in Pittsburgh which is near Glasport, credentials with the name on it, Kusserow, opened up a lot of doors.

But yes, we are related, but very, very distantly, but it's not in this country that we're related.

Senator **Lautenberg**. He was a terrific football player in the days when Columbia won a game.

I wanted to just make mention of one thing, Mr. Chairman, that we got from the Congressional Research Service, which suggest that there doesn't appear to be a constitutional problem with the proposal that we've put in.

And the other thing I would ask of each one of you, Mr. Schiffer, I get the feeling that you are among those who are most skeptical of either the value or the mission of our legislation, though I hear you salute it.

I hear you raise enough problems to say, well, okay, we may not be able to get it done. Do I read you right on that?

Mr. **Schiffer**. I really hate to be in the position of saluting, and then raising all the problems. I agree to some extent that we are doing that.

For example, the problem that occurs when a Congressional committee has visited a statute, say, within the last year. Would that be automatically included?

I by no means meant to suggest that these problems cannot be addressed, though. And the Senator referred to some of the flexibility that you had in your own testimony.

We would be very pleased to work with you.

Senator **Lautenberg**. Yes, I do not want to be too rigid. I do not like to see us at first blush extend the review period to five years.

Because if we look at one of the worst periods of inflation that we had in our history, a period ranging from 1979–1981, I mean we would be looking at a substantial change in the value of the penalty; and maybe three years.

But again, I leave that to be worked out, and ask each one of you to give us as much cooperation as you can if you agree with the value of the idea in the first place. Because we all know that consumers have to deal with inflation when they buy goods, and there is no reason why someone who violates the law shouldn't have to recognize that there is a cost of some significance.

The Consumer Product Safety Commission chairman, Terry Scanlon, thinks it's a good idea to adjust penalties within his jurisdiction. He thinks it is important to do that to maintain their deterrent impact.

You generally agree, I would take it, from the statement that each one of you has made, that as a deterrent, if that's what its value is, that it is a good idea to change the value of these?

Mr. KUSSEROW. If I may jump in, Senator, I would like to say one thing and that is, I don't think anybody cares to be issuing traffic tickets by the Federal Government.

And in some cases, when inflation overtakes somebody's original penalties, then that's what you're really relegated to doing: writing traffic tickets, and I don't think that's appropriate.

However, you do have a number of different penalties that have a cushion in there, built in, say, up to a certain amount—up to $5,000, up to $25,000. They build in a certain amount of cushion.

So whether that cushion is sufficient to carry it for a couple of years or not, that would be up to the Congress to decide.

There are a lot of differences in the statute. In fact one thing I would like to submit for the record is all of our civil monetary penalty authorities. And it is laid out in a matrix form. And it kind of carries out a lot of different data elements.

And it might be interesting for the Subcommittee to look at that, and see if that helps give them some ideas as to how to solve some of these problems.

And also, I have a schedule of the one monetary penalty that I alluded to. And I will be happy to submit that also for the record with the permission of the Subcommittee.

Senator LAUTENBERG. I am sure that the Chairman will leave the record open for any submission that you want to make, and anything that supports the case we'd like to see.

The Department of Labor imposed $21 million of penalties under OSHA, collected about half of that, $10 million, $10.3 million. $10.2 million was collected under the Federal Coal Mine Health and Safety Act of 1969.

If we index these penalties, almost tripling them, which is where it is likely to be, it is likely then we will produce tens of millions of dollars just from these two sources.

And spread across the whole Government, couldn't we reasonably expect to see a substantial increase in revenues as a result of these adjustments? Is there anything that any of you see that suggest that there wouldn't be a significant impact in terms of revenue?

Mr. WRIGHT. No, there should be, Senator.

Mr. KUSSEROW. I would also think you might want to put a reporting requirement on each of us to report not only what we're adding to the accounts receivable through the monetary penalty process, but also to report how we're doing in collecting that money; that is, how much is being collected; how much is being offset; and then also I think you'd like to know how much is being written off for what reason.

And therefore, if you are looking at a situation such as you're describing where you are only getting a portion of the money that's actually being levied, then you're in a position to ask some questions as to what seems to be the problem.

Senator LAUTENBERG. I think what's happening, Mr. Kusserow, is that there is less written off than should be, because it is carried as an asset, even though you know very often that it is an asset without value, it reduces the impact on the deficit. So there is a tendency to kind of pass those things by right now.

Mr. Chairman, your comment about the inflator, were you unwilling to use the CPI which goes back to 1913 as an indicator?

Senator **Levin**. No, not at all. I thought it might be easier for them to apply the standards so that the agency would just take the 1970—well, this might solve it. This may do it. I thought there was something other than this you were looking at.

But if it's clear that there is just one percentage, there's no additions, subtractions, fractions.

Senator **Lautenberg**. An agency can modify it. They could make a case. I don't know quite the process for them making the case. But they could say, listen, we found that we have seen a decrease, or almost an elimination of these kind of infractions, and why bother?

Well, this is going to be enabling legislation, as I see it, except that we would like to see minimums raised, so that if there is any violation of it, that people pay for it.

We certainly have now an automatic adjustment for penalties. And unfortunately or fortunately—it is unfortunately downward, because the inflation goes along and in the best of cases, it moves along at a perceptible percentage.

So what we are saying without doing anything is that we are reducing the amount of penalties for these infractions. And don't you think that we would be better off to have some kind of a data base, some kind of an information system, that gives certainly an important part of their significant revenues, as well as a way to measure whether or not these fines, these penalties, impact on the commission of these violations.

Mr. **Wright**. The answer to that, Senator, is easy. Yes, we should have that. And that's we said that however the Subcommittee decides to put in the reporting requirement, we think that the PCIE should start adding it to the reports immediately anyway in those tables that we were talking about. And the instructions have already gone out to start that.

Senator **Lautenberg**. The last thing that I would respond to is a statement Mr. Kusserow made about the difficulty of handling the task. I see this as a very simple task to administer once we've gathered the information.

I mean the initial creation of a data base, initially, could be a little complicated. We want that done. I mean, it is such an easy thing to call up. You are not doing any real record manipulation here. It is just recall. It is a very simple process.

Mr. **Kusserow**. Well, I hope I didn't give the impression that it would be too difficult a task. On the contrary, I think that the accounts receivable, in all the departments and agencies, should have an ability to track back and ask how much of it is due to administrative penalties, and to be able to cite the answer.

I think we should be able to do that right now. In fact, I am embarrassed to say that as auditor for our department, if you ask me today what the figure is, I could tell you about our own part of it, the IG part of it, but I could not tell you about the rest of it—what the FDA does or what the Public Health Service does. And that would be embarrassing.

You should be able to ask that question from the Inspector General, and the Inspector General should be able to give an answer back.

I will tell you the next time I see you across the hearing table, I will have that answer. And we will have that as a running ledger that could be consulted on any given day, and give you back the exact answer. And I do not see why we couldn't do that.

Senator **LAUTENBERG**. It is good information to have generally.

Mr. **KUSSEROW**. Well, it is embarrassing not to have it at our fingertips. I am embarrassed by the fact that you raise the point that we should have known it all along. We should take steps to immediately correct it.

Senator **LAUTENBERG**. And in closing, Mr. Chairman, I would remind our panelists that we introduced this in April of last year, and therefore, there has been some time to take a look at this.

I would urge, Mr. Wright, that if you realistically think May 1st is the date, to meet that date.

Mr. Chairman, I would move that we do not wait for the last bit of information to come in. If we establish enough of a base of information that says it's worth doing, that we get on to mark up the bill and continue trying to get it into legislation.

Thank you very much.

Mr. **WRIGHT**. Again, Senator, by that date, we won't have the last piece of information, because we will probably be missing, like I said, some independent regulatory authorities. And we will probably not be including the IRS tax provisions. We will pick up the rest at Treasury.

But still by that time I think we'll be in much better shape to be able to tell what the inventory of those things are, and come up with the recommendations.

Senator **LAUTENBERG**. We will count on it, thank you.

Senator **LEVIN**. Thank you, Senator Lautenberg. And I want to thank this panel. We have a number of things that we can be doing between now and May 1 that we discussed, so we will be ready to move shortly after we have Mr. Wright's information.

We want to do some work on this mechanism which we talked about for trying to incorporate changes into law and not just into regulation.

We want to work on the period how often we would do this, whether it would be 3 years, 5 years, 2 years, 4 years, or whatever. There are a number of other things that we have to work on.

All of that can begin immediately. But I think the principle is clear. And my understanding of Mr. Schiffer and the Justice Department's position is that they are supportive of this effort. They will be working with us to make the mechanism a practical and a functioning mechanism.

But you have no objection as I understand it to this principle that we are going to try to put into law. Is that fair, Mr. Schiffer?

Mr. **SCHIFFER**. We are entirely supportive of the notion that the passage of time warrants the study of this.

Senator **LEVIN**. No, I'm not talking about that. Are you supportive of the principle of this bill, which is that we're going to, through one mechanism or another, adjust the civil penalties, with some exceptions perhaps, which Mr. Wright's study is going to identify.

But in principle we are going to adjust civil penalties that have not been adjusted over the past few years for inflation. Is that a principle that the Justice Department supports?

Mr. **Schiffer**. As an enforcement agency, we are hard pressed not to be supportive of enhancing our civil deterrents. I would like to await the study that Mr. Wright mentioned, though, as to whether or not we truly have a problem, and what the magnitude of that problem is.

I assume we are going to find a good many statutes where there is a problem. And I mentioned before some of the practical problems.

Senator **Levin**. Give me an example of a statute, for instance, that is older than 5 years where the penalty hasn't been adjusted in 5 years where you would have a problem?

Mr. **Schiffer**. I can't think of one offhand.

Senator **Levin**. I mean theoretically what would be the source of the problem?

Mr. **Schiffer**. Well, Congress may well have visited it last year and decided there was no problem.

We may well find that the flip side of this is what Mr. Wright alluded to, which would be a salutary purpose, that there are statutes that should no longer be on the books—civil penalties have long since ceased serving any purpose, either because the conduct has ceased to exist, or because we don't view the conduct to which it is addressed as an evil to be addressed at all.

But many statutes, as Mr. Kusserow mentioned, also carry civil penalties with a range. And so it may well be that an inflation adjustment is taking place, with a range of, say, $5-to $15,000. I would like to know whether the passage of time has really in effect carried with it an inflation adjustment by raising the amounts that are regularly levied.

Senator **Levin**. Well, taking that last point first, as I understand this bill, both the ceiling and the floor would be adjusted. So I'm not sure that what you said is in any way a problem with this bill.

Mr. **Schiffer**. It is not a problem.

Senator **Levin**. In other words, you would adjust both the ceiling and floor.

Mr. **Schiffer**. I was only responding in terms of the need. I don't know how broad the need is.

Senator **Levin**. On the first problem, Mr. Wright, will your study identify any instances in the last few years where Congress has specifically addressed the question of the amount of a penalty, and decided to leave it where it is in the last few years? Are you going to be able to identify those situations?

Mr. **Kusserow**. Well, Mr. Chairman, let me answer that in part, since I'm the person who is going to have to do the study. It would be very helpful if the committee looks at it and sees that the data elements in there are what they want to have answered.

You tell us what you would like to have added to that, and we will go ahead and do that. I will put anything in there that you think would be worthwhile.

Senator **Levin**. Well, Mr. Schiffer has just raised the question, he says the Justice Department position for instance might depend on whether there are examples of civil penalties which have been specifically left where they are by Congress in the last few years.

Mr. **Kusserow**. We will build into the study then the last time that there has been a change in the penalty.

Senator **Levin**. Not just a change, but what Mr. Schiffer is suggesting is, there may have been a decision by Congress explicitly not to change it in the last few years.

Mr. **Wright**. Mr. Chairman, we will include that in the study.

Senator **Levin**. You might as well, and also include any other problems you have that might be addressed by the study. I hope you will work with the OMB folks and Mr. Wright and Mr. Kusserow so that they get you the information that would permit you to reach the judgment that is important both to you and to us.

Okay, if there are no other questions of this panel, we will then excuse you with our gratitude, and look forward to working with you.

Our second panel today that we will hear from is made up of Michael Waldman, who is the Legislative Director of Public Citizen's Congress Watch. Mr. Waldman is testifying on behalf of the U.S. Public Interest Research Group, the Consumer Federation of America, and Congress Watch.

I hope I have mentioned everybody.

Mr. **Waldman**. Yes, that's it.

Senator **Levin**. We also have Jim Lapping, who is Director of the Building and Construction Trades Department of AFL-CIO. That department is comprised of 16 national and international unions representing six million workers in the building and construction industry.

And you are accompanied by Mr. Les Murphy, I believe?

Why don't we take you in reverse alphabetical order for a change. Mr. Waldman?

TESTIMONY OF MICHAEL WALDMAN, LEGISLATIVE DIRECTOR, PUBLIC CITIZEN'S CONGRESS WATCH

Mr. **Waldman**. Thank you, Mr. Chairman. I am going to summarize my statement, and ask that it be submitted for the record.[1]

Senator **Levin**. It will indeed be made part of the record in full.

Mr. **Waldman**. First of all we want to thank you and commend you for holding these hearings, and thank Senator Lautenberg for introducing this useful and important piece of legislation. I am testifying on behalf of Public Citizen's Congress Watch, Consumer Federation of America, and the United States Public Interest Research Group. As organizations that represent consumers, we care very much about a safe marketplace, a healthy work place, a clean environment.

For that reason we strongly support this legislation and its purpose of maintaining the deterrent function of civil penalties in a regulatory structure.

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[1] See p. 60.

Our testimony focuses on statutes that protect health and safety. In summarizing the written statement there are four points I would like to make.

First, we want to emphasize just how important this task of health and safety is. Strong deterrence is so important because the cost of weak deterrence is so high, in dollars and in lives. Every day, every week, headlines tell us of what happens if there is inadequate deterrence. Consider the Monangahela River oil spill, in which Ashland Oil Company allowed millions of gallons of oil to spill into a river, and acknowledged that it was in violation of standards that were set in State and Federal regulations; consider also the *Film Recovery* case, which received a great deal of publicity a few years ago, in which conditions were so egregious in the workplace that a murder conviction was obtained against a corporate executive, yet the OSHA fine in the same case was only $2,400.

Strong penalties save lives and dollars, and they make enormous criminological and economic sense. It is axiomatic that you want to have a penalty that makes the marginal cost of breaking the law higher than the marginal cost of staying within the law.

And if we allow inflation to erode the value of these penalties below what Congress intended, the deterrent effect is going to inevitably fall. And it should also be added, by keeping the penalties at the level they were originally intended is to simply reiterate the will of Congress as it was expressed at the time.

Second, because we care about these health safety statutes, two of the organizations I'm representing today, Consumer Federation of America and the U.S. Public Interest Research Group, conducted a study of 28 key health and safety statutes, which is being released today. It is called "The Deterrence Gap: How Inflation Has Taken the Bite Out of Health and Safety Penalties," and I ask that it be submitted for the record as well.[1]

Senator **Levin**. It will be.

Mr. **Waldman**. This is precisely the type of study of these kinds of statutes that can easily be done to see how inflation has taken a bite out of the penalties. And what the study shows is very disquieting. At agency after agency, statute after statute has been seriously eroded by inflation over the years. There are just a few examples that I will give to show the severity of the problem.

FIFRA, the key statute regulating pesticides, has been mentioned before. The maximum penalty for each violation of pesticide registration and permit requirements has remained at $5,000 since FIFRA amendments in 1972. Due to inflation, that means that penalty is worth only 36 percent of its original value, which is $1,800 in today's dollars. Adjusted for inflation, on the other hand, the penalty would be $13,750.

Another statute is the National Traffic and Motor Vehicle Safety Act, the auto safety statute passed in 1966. The civil penalty that Congress established in 1966 for each violation of the act is $1,000. That has remained unchanged since 1966. Due to inflation, the value of that penalty is now $280 in 1988 dollars.

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[1] See p. 211.

And the Occupational Safety and Health Act has been referred to often. It is one of the most egregious examples of the impact of inflation. In 1970, the penalty was $1,000 per violation of workplace safety and health standards. That $1,000 today would be worth $340 in 1988 dollars.

And as you said before, I believe Senator Levin, the problem comes into even clearer focus if you compare the diminution in the penalties value, with the amount of money people pay for consumer goods, et cetera. Compare the diminution in CPSC fines and penalties with the price of consumer durables; compare pesticide penalties with the price of food. Everything is going up except the penalties that are applied against people who break the law. And the current system essentially operates as though there is a depreciation table built into each of these penalties.

There is an undeniable impact on deterrence. It is very hard to see. It is hard to quantify. But it has got to be there.

For that reason I think that this study alone, which just covers these health and safety statutes, shows the severity of the problem.

The third point I would like to make, then, is about the legislation. We believe that this bill is very important, should be passed, and should be passed without excessive delay and waiting for studies.

We would suggest that while further study is inevitably educational and useful, the problem is so undeniable that the committee ought not allow it to delay work on the legislation and passage of the legislation.

The two consumer organizations that did this study did it in about a week of effort by law students and attorneys. It is not that difficult to do. We ought not allow it to delay things.

The two elements of the legislation are both important. First, we support the indexing for inflation. And we support doing it across the board.

I think it is very important to realize and remember that we ought not go through a substantive review of whether or not this penalty or that penalty deserves to be raised or deserves to be cut. These were the penalties that were written into the law by the Congress. Raising it for inflation only restores the penalties to the value that Congress intended when those laws were passed.

The second part of the proposed legislation that we also strongly support is the gathering together of information. And previous witnesses have discussed it.

We would add that the central information gathering makes sense, not only from a managerial perspective, but also from a congressional oversight perspective, and from an oversight perspective from the point of view of the citizenry and the press.

We need to know whether these kinds of penalties are being assessed, and to what extent they're being assessed, across the board, not only because we need to know how much money is coming in, but because it will assist us and assist Congress in deciding whether new penalties are needed, and whether the system is essentially having the deterrent impact that it's supposed to have.

And I might even suggest that this type of system be considered not only for civil penalties but for criminal penalties as well. There are very few places where people working on these types of regulatory issues can find an aggregated central body of data on how well the regulatory system is working to protect the public's health and safety. And this would greatly assist it.

Finally, the fourth point I would like to make is that while we support this legislation, we think that it represents a beginning rather than an end to exploring the question of how well our health and safety statutes are deterring private sector behavior that injures the public.

For instance, it is very good to raise the penalties. But even with inflation at an end, some of these penalties are too low. And even giving penalties to agencies won't make much difference if the agencies are unwilling, as some appear to be, to use the penalties.

In the case of the Consumer Product Safety Commission, penalties can be raised. But in the last few years, staff has been cut by 40 percent. Rule-making and enforcement have slowed to a crawl. Even if this legislation is passed in its strongest form, those problems would remain.

So in conclusion we would like to say that we regard this as a commonsense, workable, effective way to restore Congress' intent; to restore the values of these fines and penalties; and we urge that the committee act on it.

Senator LEVIN. Thank you, Mr. Waldman. Mr. Lapping.

TESTIMONY OF JIM E. LAPPING, DIRECTOR, SAFETY AND HEALTH BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO,[1] ACCOMPANIED BY LES MURPHY, ASSISTANT DIRECTOR, AND DAVID H. POTTS-DUPRE, COUNSEL, BUILDING TRADES SAFETY COMMITTEE

Mr. LAPPING. Thank you, Mr. Chairman. I would also like to summarize my comments.

As I said, Mr. Chairman, with me is Mr. Murphy, who is assistant director of safety and health. And sitting behind me is David Potts-Dupre, the counsel for the building trades safety committee.

I thank you for the opportunity to testify today in support of this bill. My expertise is in the area of safety and health, and my remarks are primarily addressed to the urgent need for the application of this legislation to OSHA.

However, commonsense tells me that this legislation will be of public benefit as it applies to all Federal civil penalties.

The department has become increasingly concerned over the years as it has become apparent that the passage of OSHA and the establishment and administration of OSHA have not succeeded in creating a safer and healthier workplace.

In 1969, just prior to the passage of the OSHA act, construction workers constituted four percent of the total workforce, and accounted for 15 percent of the total fatalities.

Today, construction workers constitute 5 percent of the total workforce, and account for 26 percent of the fatalities.

Approximately 2,500 construction workers are killed each year in the United States. Indeed, during recent oversight hearings before the House Subcommittee on Health and Safety, there was unanimous consensus among labor, industry and OSHA that there is an urgent need to stem the tide of illness, injury and deaths in the construction injury.

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[1] See p. 72 for Mr. Lapping's prepared statement.

The idea of adjusting civil penalties to reflect the inflation rate is one of the most commonsense ideas to come out of the Congress in some time. When Congress enacted legislation that contained civil penalties, those penalties are set at a certain figure that Congress concludes will receive the desired objective.

The figure is computed using the value of money at that time. The value of money is continually changing, however. And if the penalty does not change correspondingly, the desired objective will not be met.

Speaking particularly to the penalties in the construction industry under the OSHA act, the need for increased penalties is readily apparent to everyone in the industry. Even employer associations are advocating higher penalties.

And when that happens, there can be question that such a change is long overdue.

The building trades department believes that the penalties established in 1970 were inadequate to do the job. But they have become more and more inadequate as the cost of living has increased.

Under the OSHA act, an employer who willfully or repeatedly violates the act is subject to a penalty of only $10,000. A serious violation can result in only a $1,000 penalty.

These kinds of penalties are not adequate to cause all employers to take the necessary steps to ensure that employees are provided a safe and healthful workplace.

In fact the penalties are so small that employers pay the fines out of their overhead costs at their headquarters without any repercussions at the job site, or to the individual in the company responsible for the violation.

In other words, there is no real accountability because employers feel it is more economical to continue to pay penalties when violations are found than to take the steps necessary to ensure that violations are not committed.

Obviously, the act in question today will not increase penalties to a level satisfactory to the Building Trades Department. Nonetheless, the act will lead to some monetary increases in penalties, and serve to keep penalties in line with the original intent of Congress.

In the Department's view, the inflationary adjustment should be made on a yearly basis. This time period appears to be the best compromise between keeping the penalties in line with inflation, and avoiding burdensome administrative activities.

Once the adjustment system is in place, it should not create an administrative burden to recalculate the penalties on a yearly basis.

Finally, I am unable to justify the exclusion of any penalty at this time. Congress acted to set the civil penalties, and if those penalties are not indexed to inflation, in actuality, the money value of the penalty decreases yearly.

That is not Congress' intent, and therefore, in the absence of a statement by Congress that a particular penalty should be excluded for some reason, this act should apply to all penalties.

As is obvious from my previous testimony, proper deterrence is not going to be achieved without a major overhauling of the OSHA act's penalty structure. However, an inflationary increase that would almost triple the penalties under the OSHA act would certainly cause some employers to reconsider their safety programs and methods of work.

It is often difficult to pinpoint whether the cause and effect of increased penalties is greater deterrence, but the statistics seem to bear that out.

For instance, in California, where CALOSHA penalties for safety and health violations are the highest in the country, the accident and injury rate is the lowest.

Furthermore, penalties sometimes do not act as deterrents until the individual is actually assessed a penalty. Then ideally the penalty either educates the individual of the wrong, or convinces a person that he will not always get away with the violation.

As mentioned before, however, if the penalty is so small that the employer treats it as part of its overhead expenses, and does not penalize the individual responsible, the penalty will not act to deter repeat offenders.

This act will cause a greater number of employers to take the enforcement arm of OSHA seriously. The Department believes that passage of this act will result in greater deterrence.

The public would probably be no more or less aware of the adjusted penalty than it is presently aware of the statutory penalty.

If, however, you asked the safety manager of a major contractor, he or she would probably have the correct answer. There are several trade publications and subscription services that would get this information out on a regular basis.

And certainly each time that the penalties are updated, it would be a reminder to employers that there are penalties for violations of Federal laws.

The Building Trades Department does not view this issue as a legitimate basis for opposing the act. In fact, if this act is passed, employers will generally be aware of the penalty after the historical cost of living adjustment is made.

Each subsequent year it may be unlikely that all employers will know the exact adjusted penalty, but they will know that penalties are adjusted in line with inflation. And any employer that is concerned about the exact figure will have ready access to the information by reference to the Federal Register.

Those of us who deal with OSHA have become increasingly frustrated by the lack of centralized reporting and record-keeping. There needs to be a centralized system for tracking penalties.

The Building Trades requests that there be centralized reporting not only of the number and amounts of the penalties imposed on the OSHA act, but also of the number of citations issued by OSHA and the suggested monetary amounts of the citations.

If the penalty actually imposed is key to the citation issue, the public and Congress will have an awareness of whether OSHA is issuing realistic citations, and whether the settlements are reasonable.

Furthermore, such reporting will allow OSHA and other enforcement agencies to ensure that regional offices are consistent with each other, and to ensure that instructions sent to their regional offices are understood and followed.

There has been a wide range of penalties collected, as versus imposed. For example, in 1978, only 49 percent of the penalties were collected. In 1981, just 3 years later, 85 percent of penalties collected.

This is not readily known to the Congress or the public, and should be through the reporting system that you have set out.

In conclusion, the Building Trades strongly urges this Committee to give the proposed legislation its unanimous support. The Federal Civil Penalties Inflation Adjustment Act of 1987 makes good practical sense, and it will result in very beneficial gains.

The act will most likely lead to a significant reduction in violations of Federal law. If that is so, who could object? Even if it does not significantly reduce the number of violations, the violators will be penalized to a greater extent, and the general public will benefit by it.

The only potential losers under this act are those individuals or companies who continue to violate the Federal law. And that is what we would like to stop.

Thank you, Mr. Chairman.

Senator LEVIN. Mr. Lapping, thank you. You mentioned the penalty for OSHA violations. I think you said in one case it was $1,000. Is that a ceiling of $1,000?

Mr. LAPPING. That is a ceiling, Mr. Chairman.

Senator LEVIN. So it is up to $1,000? Do you believe that we ought to allow the agency head in any instance to exempt a penalty from the automatic adjustment called for in the bill? Do you know of any instances where an exemption would be justified or are you willing to consider that there might be such a possibility?

Mr. LAPPING. While speaking to occupational safety and health, there is a range. They're not required to—there is not a floor. I can think of no instances where if an employer willfully or repeatedly violates a standard that causes an injury or could cause an injury, that they should be exempt from it, no.

Senator LEVIN. Do you know of any instance in the last 5 years where Congress has revisited any civil penalties in that area, and decided not to increase them?

Mr. LAPPING. Not in the 17 year history of OSHA has any of the penalties been changed.

Senator LEVIN. Mr. Waldman, do you know of any instance where Congress, say in the last 5 years, has revisited a civil penalty amount and decided not to increase it?

Mr. WALDMAN. No, I don't. I can consult with my colleagues and explore that further.[1]

Senator LEVIN. Would you let us know if you find any, because that was one of the issues which the Justice Department raised. We ought to at least address it. If it is true that a year ago Congress voted against a bill to increase the civil penalties in some agency, we ought to take that into account.

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[1] See p. 190.

I do not know of any such instance either, but we might as well try to cover all the bases.

Mr. **Waldman**. Mr. Chairman, I might add one point to that, though, which is, as you know, the legislative process often does not operate on such an up or down clearcut answer. And just because Congress or a committee hearing the reauthorization process, or in failing to reauthorize an agency, doesn't raise it, or votes down an increase for whatever reason, doesn't necessarily mean they intend the level of the fine to decrease.

Senator **Levin**. I agree with you. It would be useful to know about anyway. But I think that that point is well made.

You have made reference to the fact that when penalties are low enough this is just a cost of doing business.

Do you know of any specific incident where that has been demonstrated with great clarity? I doubt that a CEO is going to say, hell, we don't care about a $100 a day fine. That is just part of the cost of doing business.

But do you know of any anecdotal information to support that position? I happen to agree with you on it, by the way. I don't disagree that this is the cost of doing business when it is $10 a day or $50 a day, for many businesses.

But is there any way of proving that in an evidentiary way?

Mr. **Lapping**. Mr. Chairman, I do not have any written statements, as you said, from CEOs, or any reports from the stockholders.

I spend a good deal of my time with contractor associations and individual contractors, sitting in on their meetings and discussions with them.

And that is what came to light, that one superintendent had received his fourth 3 million man-hour award without an injury. And his award was a plaque. And there were other superintendents who had terrible records, but it was kind of a joke, well, he gets a plaque, and I don't get penalized for it.

So while I know it is common in the industry, I don't have any statements from any contractors.

Senator **Levin**. So it is possible, for instance, that you would see articles or clippings or find them in your file where it says an unidentified company source said, anything like that which you could submit for the record would be helpful.

I think commonsense dictates it frankly. But if you run across or find any such reference, it would be helpful to us.

I doubt very much that we are going to have a lot of opposition to this. We have made an effort to determine whether or not there is opposition to it. Because we want to give everyone a chance to be heard.

And so far, we have not found any. But it is always possible it would surface. And if there is opposition, it would be useful to have not only the logic of the bill in front of us, which is, Congress intended in 1970 that the penalty be X and now it is X minus 80 percent.

It is also used for anecdotal or evidentiary information in debate. So if you come across it, do send it on to us.

I do not have any other questions of this panel. Senator Lautenberg?

Senator **Lautenberg**. Thank you, Mr. Chairman, and I thank each of you for the fullness of your testimony. It agrees almost 100 percent with my view. And the Chairman in his wisdom covered most of the questions that I was going to ask.

I have just a couple. It feels so good to be so right on something, Mr. Chairman, as this legislation.

Senator **Levin**. That's why we feel so good so often.

Senator **Lautenberg**. The fact is that this is, in my view, and it is confirmed here by the groups you represent and the opinions you state, this is very important. This is not a casual thing.

These penalties were levied to discourage a particular type of behavior. To protect working people, consumers, whomever. And we ought not to trivialize by having it just go down the tubes because of inflation.

When it gets—you know, I was reminded by my aide that the Walsh-Healey Act penalized companies $10 a day for an infraction against employing minors. Well, $10 a day, I don't think there have been any fines imposed anyway.

But if it is a joke, let's clean up the record books. Either get it off, or get it to a point where it is serious enough to attract the attention.

The fact that we have not had a strong opposition, Mr. Chairman, I think indicates that even if someone disagreed that it would be embarrassing to come and to have us saying, well, let us leave penalties alone. They're insignificant enough now. We may as well leave them alone. We are not going to do it.

And Senator Levin asked about anecdotal views, even if they didn't have something that qualified as evidence. Do you believe that there are companies that are intentionally violating rules because the penalties are so insignificant that it doesn't matter; the risk is worth running?

Mr. **Lapping**. I most definitely do, Mr. Lautenberg. Even after they've been notified, after OSHA has inspected them, and they know that they are subject to repeat violations, they continue to operate in the same manner, and often, many fatalities occur.

But even then, they do not correct—and I would like to say that just the fact that you are having hearings on this issue is bringing it to the attention of the industry that the penalties are, and should be, increased. And it's having an impact, and we appreciate that.

Senator **Lautenberg**. We are happy that that does look like a result it might have. That's good.

What types of violations are subject to OSHA penalties that come to mind, to get them clearly on record?

Mr. **Lapping**. One of the most obvious ones is shoring in trenches. And this happens in every community, and it's often in the newspaper. Some of the studies by the National Institute of Occupational Safety and Health show that nearly all of the fatalities occur without any shoring at all in the trenches.

And this is being buried alive. And often it gets a lot of attention because the people are still buried when it comes to the 6 o'clock news. But even at that, the penalties that have come out have been very small.

One example is, we remember in 1973 in Staten Island, New York, there was a construction accident up there where there were 40 people killed, 37 in one company. And that penalty was less than $45 a worker to that company.

Senator LAUTENBERG. However, there were criminal penalties, weren't there?

Mr. LAPPING. I don't believe there were, Mr. Lautenberg.

However, when contractors know of this, that this size of penalty is all that's being levied against them for fatalities of major proportions like that, and then they know that other penalties are decreasing in value each year, there is no incentive at all to comply with existing laws.

Senator LAUTENBERG. Mr. Waldman.

Mr. WALDMAN. Yes. There are two more examples, admittedly anecdotal, which underscore what we all know to be the case. One is in the nuclear power industry. It is often the case that replacement power is more expensive than the fine that a utility would absorb if it kept a plant running in a flawed condition.

So if a turbine has a crack in it, or there is some structural flaw, it is cheaper for the utility to keep the plant running in the dangerous condition and to absorb the fines than to buy replacement power which can cost half a million dollars or higher a day.

Senator LAUTENBERG. That is a very serious charge that you make. I assume you have something to document that.

Mr. WALDMAN. Yes, I will submit for the record a report done by another Public Citizen's Critical Mass Energy Project that deals with the fines.[1]

Senator LAUTENBERG. If you would. Because what's being said is that safety is being put on the back burner in what could be an accident of major magnitude.

Mr. WALDMAN. An accident of major magnitude, or it may be an accident that endangers the workers in the reactor. It may not be the type that endangers the public at large.

Senator LAUTENBERG. I'm not thinking of an accident the size of Chernobyl, but there are people working these facilities. There's no right to treat them as any less seriously than we do in the other.

Mr. WALDMAN. There is one other place where this type of evidence that oftentimes penalties and even criminal convictions or penalties are seen as a cost of doing business, is in the management literature.

For instance, there is a book recently out, I believe it is called "The Fortune 500 and Public Policy," by two business school professors, in which they tell corporate managers about how violating the law is sometimes an option that you might want to consider doing, or that is at least considered an option when facing regulatory policies that you don't like.

Senator LAUTENBERG. I come out of the corporate world. And you know, I am concerned about the protection of the individual. You may be right, but I would have a tough time believing that there are executives in companies that size that are saying, take the hit on penalties, and the public be damned, or the workers be damned.

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[1] See p. 190.

But if you make reference to the text, make sure that that is put into the record, if you repeat the name of the publication.

Mr. **Waldman**. I believe it is "The Fortune 500 and Public Policy," but I will have to check that.

Senator **Levin**. Why don't you submit the name of that text for the record.

Senator **Lautenberg**. Obviously, it is hard to make a case against doing this. And even the panel before approached with a degree of reluctance. I mean it was very hard, including our friend from the Justice Department, to make a case that we ought not do this.

You make a very important point, Mr. Waldman, that I agree with during your testimony, that is, establishing a data base is of itself a valuable exercise. Let's find out whether maybe these things don't do any good. Maybe they've not been used.

Then why carry that extra baggage in our statutes? We have enough junk to look at.

I appreciate your testimony. You are a confirmation at least that we are on a good track.

I would ask you one last question: Do you have any problem with the index or the adjustment being done in less than 5 years or less frequently than 1 year?

I have kind of a preference that it should be biannual, every 2 years, or every 3 years, because in 5 years, you could have inflation running strong. I think if it is kept up to date, and those who are violating have to know very well that this is a focus of attention. It's not even the fine so much as the fact that this is an important part of the code in this country, and we intend to enforce it.

Do you have any problem? What do you think about the adjustment period? Should it be 5 years?

Mr. **Waldman**. If I might answer that, we would like to see it done as often as possible. We prefer 1 year. If it has to be higher in the wisdom of the committee, that may be the case.

But I might want to point out that 5 years, when we get up to that level, is really quite a long time. For instance, right now, inflation is running between 4 and 5 percent. If inflation stayed the same rate, the difference between a statute passed today and 5 years from now would be a diminution in value of 20 to 25 percent. And that seems like a significant reduction in deterrent value. So I would hope that it would remain at 1 year, but certainly not go as high as 5 years.

Senator **Lautenberg**. Mr. Lapping, do you have a view on it?

Mr. **Lapping**. Senator, I think as the Government witnesses said earlier, it would be very easy to adjust it. It would be an educational process during the adjustment, notification of the adjustment, 2 or 3 years.

But 3 years certainly at the limit. We of course would prefer to see, I know at the AFL-CIO we're looking every month or every quarter, whenever the unemployment statistics come out, and that's easily done, and it could be also on the penalties.

Senator **Lautenberg**. Thank you.

Mr. Chairman, I also have submitted a bill, S. 1015, which is in front of the Judiciary Committee. That has to do with fines under criminal statutes as well, to further develop the approach.

I thank you very much.

Senator **Levin**. Well, we hope to move a lot more quickly than the Judiciary usually moves.

Senator **Lautenberg**. I hope so. I am not on the Committee so I don't feel free to criticize.

Senator **Levin**. I'm not either. That's why I feel free to criticize.

We will move expeditiously on this. We will hope to have a markup in early May. There is no reason why we shouldn't. We can make all the progress we need to on revising, where it has to be revised, between now and then.

Senator Lautenberg, again, we appreciate your initiative. It is because of you we are here. And I think the entire country is going to be in your debt when we do this, because we are going to restore this deterrent to what it was intended to be.

Senator **Lautenberg**. Thank you very much.

Senator **Levin**. Thank you. Thank you all.

[Whereupon, at 3:53 p.m. the Subcommittee adjourned to reconvene at the call of Chair.]

APPENDIX

100TH CONGRESS
1ST SESSION

S. 1014

To increase civil monetary penalties based on the effect of inflation.

IN THE SENATE OF THE UNITED STATES

APRIL 10 (legislative day, MARCH 30), 1987

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To increase civil monetary penalties based on the effect of inflation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Civil Penalties Inflation Adjustment Act of 1987".

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring viola-

tions, and furthering the policy goals embodied in such laws and regulations;

(2) the dollar amount of many civil monetary penalties has been reduced due to inflation that has occurred since Congress last set or adjusted the penalty amount;

(3) the reduction by inflation of civil monetary penalties has reduced the effect of civil monetary penalties in deterring violations and promoting compliance with the law, and has reduced revenues to the Federal Government; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of governmental agencies to assess and collect civil monetary penalties.

(b) PURPOSES.—The purposes of the Act are to—

(1) provide for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and to promote compliance with the law;

(3) improve the collection by the Federal Government of civil monetary penalties.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES

SEC. 3. Effective January 1, 1988, any civil monetary penalty provided for in Federal law shall be adjusted as provided in this Act.

ADJUSTMENT FOR TAXABLE YEAR BEGINNING IN 1987

SEC. 4. (a) IN GENERAL.—Not later than December 15, 1986, the head of each Federal agency shall prescribe and publish in the Federal Register a schedule of civil monetary penalties for each civil monetary penalty provided by law within the jurisdiction of the Federal agency which shall apply for the year beginning after December 31, 1987, in lieu of the penalties provided in the law as of the date of the enactment of the Federal Civil Penalties Inflation Adjustment Act of 1987.

(b) METHOD OF PRESCRIBING SCHEDULE.—The schedule of civil monetary penalties shall be prescribed by increasing each penalty amount by the historical cost-of-living adjustment. Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $10.

(c) HISTORICAL COST-OF-LIVING ADJUSTMENT.—For purposes of subsection (b), the historical cost-of-living adjustment for each penalty amount is the percentage (if any) by which—

(1) the average of the Consumer Price Index as of the close of the 12-month period ending on September 30, 1987, exceeds

(2) the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of the calendar year in which such penalty amount

was last determined under law prior to the date of the enactment of the Federal Civil Penalties Inflation Adjustment Act of 1987.

ANNUAL ADJUSTMENTS FOR TAXABLE YEARS BEGINNING AFTER 1988

SEC. 5. (a) IN GENERAL.—Not later than December 15 of 1988 and each subsequent calendar year, the head of each Federal agency shall prescribe and publish in the Federal Register schedules of civil monetary penalties which shall apply in lieu of the schedule prescribed under section 4 with respect to taxable years beginning in the succeeding calendar year.

(b) METHOD OF PRESCRIBING SCHEDULES.—The schedule which under subsection (a), is to apply in lieu of the schedule prescribed under section 4, with respect to years beginning in any calendar year shall be prescribed by—

(1) increasing each base penalty amount by the cost-of-living adjustment for such calendar year; and

(2) adding to the schedule any civil monetary penalty within the jurisdiction of the Federal agency that was enacted into law in the previous calendar year and increasing the base penalty amount by the cost-of-living adjustment for the current calendar year.

Any increase determined under clause (1) or (2) shall be rounded to the nearest multiple of $10.

(c) COST-OF-LIVING ADJUSTMENT.—For purposes of subsection (b), the cost-of-living adjustment for any calendar year is—

(1) in the case of base penalties provided by law before December 15, 1987, the percentage (if any) by which—

(A) the Consumer Price Index for the preceding calendar year, exceeds

(B) the Consumer Price Index for the calendar year 1987; and

(2) in the case of base penalties provided by law on or after December 15, 1987, the percentage (if any) by which—

(A) the Consumer Price Index for the preceding calendar year, exceeds

(B) the Consumer Price Index for the calendar year in which the base penalty was provided by law.

(d) CONSUMER PRICE INDEX FOR ANY CALENDAR YEAR.—For purposes of subsection (c), the Consumer Price Index for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

DEFINITIONS

SEC. 6. For purposes of this Act—

(1) the term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor; and

(2) the term "base penalty amount" means the civil monetary penalty provided by law, absent any adjustments made pursuant to this Act.

REPORTING

SEC. 7. (a) COMPREHENSIVE REPORT BY THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall annually prepare and issue a comprehensive report that includes—

(1) the number and amount of civil fines or penalties imposed pursuant to each provision of law providing for such fines or penalties; and

(2) the number and amount of such fines and penalties actually collected.

(b) REPORTS BY OTHER AGENCIES.—The Director of the Office of Management and Budget shall establish a system of reporting to be used by the agencies empowered to impose or collect civil monetary fines and penalties to enable the Director to prepare the report described in subsection (a).

TESTIMONY
OF
JOSEPH WRIGHT
DEPUTY DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET

Good afternoon, Mr. Chairman. I appreciate this opportunity to appear before you this afternoon to discuss the administration's position on S. 1014, the Federal Civil Penalties Inflation Adjustment Act of 1987. This bill would provide for annual adjustments for inflation of the statutory amounts of civil monetary penalties. All civil monetary penalties authorized under federal law would be covered and treated uniformly. The adjustments would be published in the Federal Register. In addition, the draft bill would require OMB to establish a centralized system for recording and reporting on collections of civil monetary fines and penalties.

For reasons I will outline, the Administration agrees with many of the underlying objectives of Senator Lautenberg's proposed legislation. However, we have reservations about the bill as currently drafted.

First, permit me to give some background on civil monetary penalties (CMPs). Federal laws authorize CMPs as a method of enforcing a variety of provisions in an administrative law forum or as a civil action brought in United States District Court. CMPs serve a variety of objectives, such as discouraging fraud and abuse in government programs, protecting consumers in the marketplace and workers in the workplace, as well as collecting revenue. From an administrative viewpoint, CMPs, like some other civil actions by government, are considered to be important backups and alternatives to the federal government's white-collar criminal law enforcement efforts.

Statutes containing civil monetary penalties are so widespread that it is impossible at this point to say exactly how many there are. Dick Kusserow, the Vice Chairman of the President's Council on Integrity and Efficiency, as well as the Inspector General of the Department of Health and Human Services, will provide testimony that his office is authorized to impose 48 separate CMPs in the health field alone. Virtually all federal departments and numerous independent agencies have CMP authorities. In fact, a far-reaching government-wide CMP law was enacted last year which originated with this Committee. We were please to work with this Committee in developing the Program Fraud Civil Remedies Act which gives each agency administrative authority to impose CMPs for false claims submitted in connection with government programs.

OMB believes CMPs will continue to be extremely useful law enforcement tools, as they can be used to sanction such a wide variety of prohibited activity. CMPs do more than recover funds and sanction wrongdoers. They often serve as an effective alternative to court prosecutions and provide added deterrence to would be wrongdoers intending to defraud or abuse government programs.

Given the important role CMPs play in law enforcement and program administration, the objective behind S. 1014, to preserve the impact of the CMP from erosion by inflation, is one we share with Senator Lautenburg. The problem it addresses has been identified by us in recent years and we have made some attempts to correct it already. We often cite the case, of which I am sure you are aware, of the False Claims Act, which originally set its civil forfeiture at $2,000 in 1863. This figure was not increased for more than 100 years. Finally, 1986 amendments brought the forfeiture amount up to $10,000 to reflect inflationary effects. The False Claims Act penalty, of course, is not a civil monetary penalty in the technical sense. But the problem of inflationary impact applies in the CMP setting as well.

Clearly, to remain effective, penalties must reflect the economics of the day. However, we seriously question whether an automatic government-wide increase should be made as frequently as S. 1014 proposes; and whether OMB is the proper agency to collect and report CMP collections information as the bill contemplates.

An automatic inflation adjustment would seem to serve the purpose of preserving the important deterrent effect, which I mentioned earlier, of the civil monetary penalty. However, an adjustment is simply not called for in every case. For instance, many CMPs are created to curtail certain kinds of conduct and are almost immediately effective in doing so. Once the target persons or industries change their customs to conform to new regulations, few sanction actions are necessary and the penalties become less crucial to active law enforcement. In other cases, where an agency's experience suggests that penalties are not high enough to serve the function intended, the agency has asked Congress to increase the amount of the individual penalty. This happened recently in the 1987 budget reconciliation act where the Department of Health and Human Services successfully sought to double a health care sanction authority delegated to the Inspector General.

Further, we believe that adjustments of civil monetary penalties on an annual basis simply may not have the desired effect of strengthening deterrence. Very often, the statutory amount is a ceiling, i.e., a figure representing the maximum sum the government could impose. But administrators, for one reason or another, do not always seek or threaten to impose the maximum amount. Thus increases by small, regular increments may serve no purpose at all. In fact, if the CMP is viewed as a recovery device as well as a deterrent, we believe the cost of carrying out an annual adjustment would outweigh the incremental revenues collected as a result of the adjustment. We would also note that a great many CMPs do not have a set dollar amount. They may only be a forfeiture on the amount that was improperly charged or they may be described in terms of "twice the amount claimed." We may wish to explore these types of monetary penalties as well as those with fixed amounts.

Finally, we are concerned that Congressional awareness and interest in civil monetary penalties will be reduced to the extent that an automatic adjustment reduces the attention that Congress may give to individual sanctions under conditions where major penalty adjustments are sought.

With these comments in mind, I would like to offer some recommendations. As I stated previously, we agree that civil monetary penalties need to be updated so that they do not become antiquated and toothless sanctions.

With regards to reporting under Section 7. The 19 statutory Inspectors General currently report in their own semiannual reports to Congress as well as in the PCIE reports the total number of administrative actions taken, such as debarments and exclusions. They also report under the recoveries category the dollar amounts added to the accounts receivable in their agencies that arise from audit reports. With the passage of the new government-wide Program Fraud Civil Remedies Act (PFCRA) there is an annual reporting requirement to Congress of the CMPs added to the accounts receivable during this period. This also is being reported. I have requested that the PCIE add a separate column along side the PFCRA to reflect the other CMPs levied during the period and added to the accounts receivable. This should in great measure meet the intent of Section 7.

However, S. 1014 may be premature. We would propose that the President's Council on Integrity and Efficiency study the matter in the next few months, catalog CMPs throughout federal departments and agencies, and examine how effectively they are used. Both Dick Kusserow, and I believe that we have the resources through the Inspectors General community, to undertake and produce a report on this topic in a reasonable period of time. We need more information on this subject to make a meaningful recommendation to the Congress.

We believe a first phase report could be produced by May that would cover those agencies and departments that have a statutory Inspector General. That would encompass the vast majority of government programs, operations and budget outlays. It will provide a clearer understanding of how the various CMP statutes work. The second phase would be to look at the hundreds of CMPs that are part of smaller agencies and regulatory bodies, many of which are independent (e.g., FTC, SEC, FCC, ICC, etc.). Then, we would be willing to work with Senator Lautenburg and other members of the Committee to draft legislation which better meets the needs identified by S. 1014. For example, we would like to see penalties adjusted for inflation less frequently, maybe every five years. History shows the need for an adjustment in the penalty amount, but not every year, and certainly more often than every 100 years. A five-year interval between adjustments would allow new penalty amounts to take effect as well as allow departments and agencies to assess the need for additional increases. If legislation is needed to increase a particular penalty substantially, then legislation can be introduced. Indeed, there may be penalties such as those found in tax codes, which should not be adjusted except through legislation. Of course, there will be civil monetary penalties for which an automatic adjustment is perfectly appropriate.

Additional time before acting on S. 1014 would also afford the executive branch an opportunity to overcome another concern we have with the bill, and that is the issue of notice. A result of S. 1014, as drafted, would be that the underlying basis for the penalty, i.e., the prohibited conduct, would be found in the individual statutory provision, but the applicable amount of the penalty would be found elsewhere, in the Federal Register. There is an obvious opportunity for confusion and mistake, particularly on the part of those to whom the law is addressed who undertake certain courses of conduct in light of legal consequences. If S. 1014 were to specify the civil monetary penalties subject to its terms, the U.S. Code annotations would notify persons potentially covered that they must also consult the Federal Register for complete information.

I am sure that further discussion will lead to other concerns, but before any of us feel qualified to address them, I believe that a systematic collection of the facts would be the appropriate first step.

I hope my comments today are helpful. I am sure that the other members of the panel have positions that they would like to share with you, so I won't take up any more time.

Thank you.

TESTIMONY
OF
RICHARD P. KUSSEROW
INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
ON
S. 1014, THE FEDERAL CIVIL PENALTIES
INFLATION ADJUSTMENT ACT OF 1987

FEBRUARY 29, 1988

Good afternoon, Mr. Chairman, Members of the Subcommittee. I am Richard P. Kusserow, Inspector General of the Department of Health and Human Services and Vice-Chairman of the President's Council on Integrity and Efficiency. I welcome the opportunity to testify today on civil monetary penalties programs and authorities which we have implemented for the Department. I would also like to use this opportunity to share my thoughts on S. 1014, the Federal Civil Penalties Inflation Adjustment Act of 1987.

In late 1976, the Office of Inspector General was created to eliminate fraud, waste and abuse from nearly 300 HHS programs. Medicare and Medicaid together represent the second largest expenditure in the Department. The dramatic growth of these two programs has been concurrent with the growth in the number of health care providers who have learned to abuse the programs by submitting false, fraudulent or otherwise improper claims. In reality, we found out early on that health care programs grew so fast and large that fraud and abuse rose to epidemic proportions.

Since that time, we have been active in both pursuing criminal investigations and in eliminating all administrative loopholes which foster fraud and waste. Unfortunately, criminal prosecutions are not always possible in each and every health care provider fraud case. Congressional response to this problem was with the passage of a civil money penalty authority in the Omnibus Budget Reconciliation Act of 1981. The Civil Money

Penalty Law (CMPL) reaches those health providers who intentionally submit false or otherwise improper claims as well as those who "should have known" they were doing so. However, it has not been used to harass health providers who make honest mistakes.

We have found that civil money penalties (CMPs) are a very effective enforcement tool. We have also seen it become a very good deterrent against fraud. It encourages health providers to check the accuracy of information on claim forms submitted by themselves or someone on their behalf such as nurses, clerks or billing services. Where persons have failed to render services as claimed they can be liable for up to twice the amount claimed as an assessment and a penalty of up to $2,000 per item or service improperly claimed.

Since those early days, even more CMP authorities have been established in HHS. Additional CMP authorities have come with the passage of the Omnibus Budget Reconciliation Acts of 1985, 1986, and 1987. We now have a total of 48 money penalty authorities in HHS. These include several Medicare and Medicaid nursing home civil money penalties:

- Any individual who notifies (or causes to be notified) a nursing home facility of the time or date of an annual survey is subject to a CMP similar to the imposition of CMPs under section 1128A of the Social Security Act.

- A facility that willfully and knowingly causes an individual to certify a material and false statement in a resident assessment is subject to a CMP of not more than $1,000 for each assessment and not more than $10,000 with respect to any facility.

- If a State finds that a skilled nursing facility remains out of compliance, a CMP maybe assessed and collected for each day out of compliance.

Further, the passage of the Program Fraud Civil Penalties Act of 1986 has resulted in the use of civil monetary penalties Department-wide. With your permission, I would like to submit for the record a copy of a chart which lists the number of CMP authorities now being administered by my office.

During the last 5-years, our collection of penalties has increased substantially. In 1983, when the regulations became final, we collected $1.4 million. This past year, the OIG recovered $11.7 million in funds lost though fraudulent Medicare and Medicaid claims. I would like to submit for the record a chart which represents the number of cases and dollars collected under our health care CMP authorities.

Some of the notable cases are reflected in the following summaries:

- A hospital agreed to pay $450,000 for improperly billing the Medicare, Medicaid and Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) programs for inpatient psychiatric services rendered by non-physicians, for services that were not adequately documented in the patient's medical records and for using improper billing codes.

- Two anesthesiologists paid over $320,000 in penalties, interest and restitution for billing the Medicaid program and Blue Shield for services claimed to be personally performed, but which were actually provided by hospital staff anesthetists.

- An Administrative Law Judge (ALJ) ordered a physician to pay a civil penalty of $67,500, an assessment of $13,000 and barred the physician from participating in the Medicare or Medicaid programs for 3 years. The ALJ found 31 instances in which the provider billed for hospital admissions and visits which were not performed.

As you can see, we have been very successful in imposing civil money penalties.

We believe that some of the concepts incorporated in S. 1014 are needed. Based on our experience, we know that proper application of civil money penalties can make a significant difference in reducing fraud and abuse in our programs. We also know that raising penalties to correspond to inflation keeps it from becoming a toothless enforcement tool. However, this decision can't be made on an automatic basis. There are just too many penalties. Consequently, we agree with OMB and Justice that an adjustment every five years would ensure that dollar amounts keep pace with inflation.

Further, we believe that all penalties need to be examined on an individual basis so we can best determine those needing adjustment. For example, last year we petitioned the Congress to raise the CMP for violations of the emergency room patient dumping authority from $25,000 to $50,000. Congress did so in the Omnibus Budget Reconciliation Act of 1987 because it agreed that we needed to send a message to hospitals and practitioners that we were serious.

Finally, some penalties need to be raised substantially while others need to be increased on a regular basis or may not even require change. We have examined those CMPs in HHS and I believe that the other Inspectors General can effectively undertake this assignment. I also believe that once all CMPs have been identified, management information systems can be designed to track the dollars obtained through the imposition of these penalties.

In the last Congress this Committee worked to pass into law the Program Fraud Civil Remedies Act (PFCRA). It created, for the first time, an administrative monetary remedy that crossed program lines throughout the Federal government. It assigned in statute a major role for Inspectors General to investigate cases of unjust enrichment arising from program fraud and abuse. It is a tool that can be used in lieu of court prosecutions when deferred by the Department of Justice or, under certain circumstances, can be used in conjunction with court prosecutions. IGs will be reporting annually on the results of using this authority. In addition, Joe Wright, in both his role at OMB and as Chairman of the PCIE, has proposed that the PCIE reports include CMP results of both PFCRA as well as other CMP authorities. CMPs collected will result in additions to the accounts receivable of the U.S. Government. We currently report in our own semiannual reports to Congress and to the PCIE the total number of administrative sanctions by number (i.e., debarments/exclusions). This is consistent with Section 7 of this bill.

This concludes my testimony. I would be pleased to answer any questions.

Department of Justice

TESTIMONY

OF

STUART E. SCHIFFER
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE

THE

SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

CONCERNING

THE FEDERAL CIVIL PENALTIES INFLATION
ADJUSTMENT ACT OF 1987

S. 1014

FEBRUARY 29, 1988

Thank you for the opportunity to set forth our views concerning S. 1014, the proposed "Federal Civil Penalties Inflation Act." This bill would provide for the regular adjustment of the size of monetary penalties set forth in existing civil statutes to keep pace with inflation. We appreciate the Committee's continued efforts to strengthen the enforcement powers of the Government. The Committee's concerns generally for problems of fraud, waste, and regulatory abuses have resulted in valuable laws of importance to the Department of Justice. In the case of S. 1014, however, we have reservations about the need for the legislation and the burdens and possible confusion over the terms of present civil penalty laws that might result.

Few civil monetary penalties are directly supervised or administered by the Department of Justice. Most civil penalties are within the jurisdiction of other agencies, which are responsible for initiating or referring civil penalty cases and would be responsible for the revision of such penalties under this bill. Almost all civil penalties may become the subject of litigation that is handled by the Department of Justice, however, where some enforcement or collection proceeding becomes necessary or where the imposition of the penalty is reviewed on appeal by a Federal court.

With that caveat, our reservations about the bill are as follows:

While inflation may depreciate the impact of some penalties, there is no data of which we are aware that demonstrates that the consequence of inflation is so immediate or substantial as to require annual revisions. If the bill were enacted, we believe that any civil penalty updates should occur no more frequently than once every five years; indeed, once every ten years might be quite adequate. Moreover, if Congress recently has considered amendments to a statutory scheme that contains civil penalties, it might be appropriate to exclude such laws from this scheme of revision. Most of the major environmental protection laws, for example, have been amended within the last few years and the same is true of many tax penalties. Where Congress has given specific attention to a law, regardless of whether it amended the penalty or decided not to do so, that focused review should take precedence over the more mechanical review that S.1014 proposes. Thus, if Congress were to decide on a five- or ten-year review cycle for S. 1014, it should also provide that no adjustment occur to a law that has been enacted or amended within a like period.

As a general proposition, inflation is not necessarily a major factor affecting the outcome of cases litigated by the Department. This is because most civil penalties are expressed as an amount up to a maximum. Where the government alleges, as is often the case, numerous separate violations or a continuing violation by a pattern of conduct over a substantial period of time, the allegations generate potential liabilities that are very large. The Department's experience in such cases has been that courts often award less than the maximum allowable civil penalty. In these cases, and in those that are settled, ability to pay frequently is more important than other possible considerations. In these cases, an upwards adjustment of the size of the civil penalty for inflation probably would not have affected appreciably the amount recovered.

Another important concern with S. 1014 is one of notice. As a result of this bill, eventually the description of the prohibited conduct will be found in the statute, while the size of the penalty will be found elsewhere, in the _Federal Register_. There is obvious opportunity for confusion and mistakes, particularly on the part of those to whom the law is addressed, who seek to evaluate the consequences of certain conduct or practices that may impinge upon the law. An upgraded civil penalty is not likely to yield increased deterrence if it can only be discovered in the _Federal Register_.

It also is not clear which statutes would be adjusted pursuant to S. 1014; not all laws use the term civil monetary penalty. In addition, the bill does not indicate how the adjustment of a penalty amount would apply to conduct that preceded the adjustment or to pending proceedings in which the penalty might be imposed.

Of particular concern, is the possible application of S. 1014 to the civil penalties contained in the tax code. There are over 130 civil penalty-type provisions in the Internal Revenue Code. By congressional action in 1982, 1983, 1984, and 1986, many tax penalties were increased, sometimes substantially.

Moreover, the tax writing committees are currently conducting comprehensive studies of the penalties contained in the Internal Revenue Code. Under the circumstances, there should be no need to require additional revision of the tax code under this bill. In addition, annual adjustments under this bill of tax penalties would create severe problems associated with the printing of IRS forms and publications that describe such penalties, and for the programming of IRS computers and training of IRS personnel in preparation for the tax filing season. For these reasons, the Department strongly recommends that penalties imposed by the Internal Revenue Code be excluded from the purview of this possible legislation.

Finally, the Department recommends against requiring the development of separate reporting systems for each of the several hundred civil penalty provisions that now exist. The associated burdens and costs would seem to outweigh the possible benefits.

STATEMENT OF

MICHAEL WALDMAN

LEGISLATIVE DIRECTOR
PUBLIC CITIZEN'S CONGRESS WATCH

On behalf of

PUBLIC CITIZEN

CONSUMER FEDERATION OF AMERICA

UNITED STATES PUBLIC INTEREST RESEARCH GROUP

on

THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

February 29, 1988

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to testify today. My name is Michael Waldman. I am Legislative Director of Public Citizen's Congress Watch, and I am testifying on behalf of Public Citizen,[1] Consumer Federation of America,[2] and the United States Public Interest Research Group (USPIRG)[3].

As organizations that represent consumers and fight for a safe marketplace, a healthy workplace and a clean environment, we care deeply about the federal regulatory system's ability to protect the public. These hearings are an important part of the effort to assure the system's effectiveness. For that reason, we support the Federal Civil Penalties Inflation Act (S. 1014) introduced by Senator Lautenberg as a common-sense, effective step toward strengthening the federal law-enforcement system.

The Civil Penalty System and Protection of the Public

It is abundantly clear that effective regulation is needed to buffer the citizenry from harmful practices in the private sector. Every week brings new examples where businesses overstep sector. Every week brings new examples where businesses overstep their bounds -- imposing costs on the public in the form of toxic waste, unsafe products, or worker injuries.

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[1] Public Citizen is a nonprofit research and advocacy organization founded by Ralph Nader in 1971, which works on behalf of its 60,000 members and all consumers. Congress Watch is the legislative advocacy arm of Public Citizen.

[2] Consumer Federation of America is a coalition of over 240 national, state and local consumer organizations which together represent more than 50 million people.

[3] U.S. Public Interest Research Group is the national lobbying office for state PIRGs across the country. PIRGs are nonprofit, nonpartisan consumer advocacy organizations.

Federal regulatory agencies and the web of civil penalties are central to the protection of the public's safety and health. To be sure, the federal regulatory system is not the only such accountability mechanism: liability through the civil justice system, collective bargaining, and the sunlight of publicity are all effective methods for restraining irresponsible business behavior. In addition, prosecutors are increasingly using criminal sanctions against institutional actors. But these other law-enforcement efforts will fail if not joined with an effective array of regulatory sanctions. When the civil enforcement system weakens or fails, thousands of lives and millions of dollars are put at risk. Therefore we must be vigilant to ensure that the social benefits of effective regulation are not eroded.

Inadequate deterrence has a staggering human cost. Consider the recent Monongahela River oil spill. According to press reports and local officials, the Ashland Oil Company was in violation of several state and federal regulations in the transportation, construction and operation of the oil tank that ruptured and poured thousands of gallons of oil into the river in one of the largest spills in the nation's history. Consider as well the poisonings of 1,200 Fourth of July picnickers in 1987, who were suffered the effects of eating watermelons contaminated with the pesticide aldicarb. Fines against pesticide applicators under the 1972 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) amendments are so low that even subsequent regulatory enforcement has not diminished misuse of the pesticide. Consider, finally, the highly publicized Film Recovery case, in which workplace conditions were dangerous they eventually led to a murder conviction. Because of caps in the OSHA statute, the agency's fines for the workplace death amounted to only $2400. In each of these incidents, civil penalties were supposed to deter the responsible actors. Yet apparently those penalties were too low to forestall the harmful activity.

In our view, there should be little controversy about the strengthening of the civil penalty system envisioned by this legislation. These penalties should rise with inflation because it is the best deterrence policy -- and because Congress has already spoken.

First, strong penalties are a necessary and effective deterrente against violation of critical health and safety requirements. Common sense tells us that civil penalties -- like civil liability -- must be high enough to make the marginal cost of breaking the law higher than the cost of complying with the law. This is buttressed by a large volume of legal and economic literature. Professor A. Mitchell Polinsky, in An Introduct[illegible] to Law and Economics, identifies "a basic principle" in economic analysis of law enforcement: "If individuals are risk-neutral, then the efficient system of law enforcement is one in which the fine is as large as possible . . ." This is especially true if many infractions go unpunished. The Nuclear Regulatory Commission's regulation of Virginia Power's Surry nuclear power plant exemplifies the consequences of inadequate penalties. NRC penalties are so low (in 1986, they averaged $82, 100) that absorbing the punishment and running a defective plant is cheaper to the utility than buying replacement power at up to $500,000 per day.

Second, by restoring the actual value of civil penalties Congress will clearly reiterate its already stated intent. Every one of these penalties was passed by Congress. Many were the result of full debate and considered compromise. And in setting these penalties, Congress could not have intended that their value -- and effectiveness -- would actually shrink. Instead, inflation's future impact on penalties is often overlooked in the hustle and bustle surrounding legislation. On other occasions, it is assumed that penalties will be periodically reassessed when the statute is reauthorized -- yet in recent years many reauthorizations have not taken place. The Consumer Product Safety Commission (CPSC), for example, was last reauthorized for two years in 1981, and despite subsequent attempts has not been reauthorized since 1983.

The Deterrence Gap: How Inflation Has Eroded Civil Penalties

Beginning in the late 1960s, in response to growing concern over the impact of American business practices on public health and safety, Congress passed a slew of health and safety laws and created new agencies to enforce them. Many of these statutes contained civil penalty provisions designed to encourage compliance and deter harmful conduct. Some key environmental statutes have been updated recently, but penalty provisions in most others have not been changed since the high-inflation period of the 1970s.

These penalties have been significantly eroded by inflation. The 1970s and 1980s have been a highly inflationary period. (The hyperinflation of the 1970s is well understood; but even today the inflation rate is near the level deemed so threatening in 1971 that President Nixon imposed wage-price controls.)

To assess the impact of inflation on these civil penalties, Consumer Federation of America and the U.S. Public Interest Research Group conducted a study of 28 key health and safety statutes, The Deterrence Gap: How Inflation Has Taken the Bite Out of Health and Safety Penalties. The results are disquieting. At agency after agency, inflation has significantly reduced the real value of the civil penalties upon which we depend. For example:

* FIFRA -- The maximum penalty for each violation of pesticide registration and permit requirements has remained $5,000 since FIFRA amendments were enacted in 1972. Due to inflation, that $5,000 is worth only 36 percent of its original value ($1800 in today's dollars). Adjusted for inflation, the penalty would be $13,750.

* Consumer Product Safety Act -- The maximum penalty for

each violation of the CPSA has remained unchanged at $2,000 since 1972; it is worth only $720 in today's dollars. Adjusted for inflation, the penalty would be $5,520. Also, in 1972 the CPSA set a maximum total penalty of $500,000, worth $180,000 today. If adjusted, the maximum total penalty would be $1.38 million.

* National Traffic and Motor Vehicle Safety Act -- The act sets safety standards for the multibillion dollar automobile industry. In 1966, Congress established a civil penalty of $1,000 for each violation of the Act; the penalty is unchanged today. Inflation has reduced the penalty's value to 28 percent of its original worth, or $280. In 1974, the maximum total penalty for related violations of the Act was raised to its current $800,000 -- which is worth $336,000 today, or 42 percent of original value. Adjusted for inflation, these penalties would be $3,560 and $1,872,000 respectively.

* Occupational Safety and Health Act -- When OSHA was passed in 1970, civil penalties were $1,000 per violation of workplace safety and health standards and $10,000 for failure to furnish a workplace free from serious health hazards; they remain at $1,000 today and $10,000 today. Those penalties are worth just $340 and $3,400 per violation today. Yet if they were adjusted for inflation, they would be set at $2,970 and $29,700.

As a result of this shrinkage, deterrence has failed to keep up with the value of goods and services. Compare pesticide penalties to today's food prices. Compare CPSC penalties to the cost of consumer durables. Compare motor vehicle penalties to the cost of new cars. Compare OSHA penalties to the gross national product. The result? The cost of goods and services has doubled since the mid-1970s while most penalties have remained unchanged. Thus, penalties have declined in value by about half -- and so, presumably, has their deterrent impact.

It defies reason to allow these civil penalties to shrink. The damage is real, even though the relative decline of deterrent capability is invisible. The current system operates as if there were a built-in depreciation schedule in our key health and safety statutes. It cannot help but give malefactors the idea - that the regulatory cop is off the beat. The effect on deterrence may be difficult to quantify; but it is undeniable.

The Federal Civil Penalties Inflation Adjustment Act: Restoring the Civil Penalty System

Inflation's corrosive effect on civil penalties will be repaired by the legislation introduced by Sen. Lautenberg, the Federal Civil Penalties Inflation Adjustment Act (S. 1014). This legislation takes two positive steps.

* Indexing for inflation -- The novel element of the legislation is its provision to restore civil penalties to the value intended when they were enacted. This will be accomplished

by simply calculating what the level of civil penalties would be if they had been periodically adjusted for inflation. In the future, civil penalties would be adjusted to keep pace with inflation.

This approach has several virtues. First, it rests on a core of common sense: at a minimum, if the system of civil penalties is to work, it cannot constantly shrink. Pegging penalties to inflation simply restores their original value and economic impact.

Second, raising the statutory level of penalties preserves agency flexibility and discretion. Since most statutes set maximum penalties, regulators will retain their ability to assess a range of fines below that level. They will, however, be given enhanced ability to negotiate and enforce the law. This legislation merely assures that regulators have the tools for effective and tough enforcement. It should also be noted that by pegging penalties to the consumer price index, the legislation raises them less than other possible inflation measures. For example, the producer price index (PPI) has risen faster than the CPI, and is in many ways a more accurate measure of how inflation has affected the productive sector of the economy. In short, S. 1014 has chosen a moderate and workable means to restore the value of these penalties.

We wish to state, in addition, that the automatic nature of this provision is crucial to the legislation's effectiveness. Congress should refrain from giving agencies the authority not to adjust their penalties to inflation. Recent history has shown that some agencies are reluctant to enforce the law. An option that enables them to avoid strong enforcement may well be eagerly used. In addition, like metal filings to a magnet, opt-out provisions will attract special pleas from industry after industry. Consumer groups, labor unions, environmentalists and Congress would be unable to adequately monitor the results of such a process. Only automatic, mandatory indexing will give agencies the ability to withstand pressures to make an exception "just this once." In short, an opt-out provision could undermine much that is good about this legislation.

* Comprehensive report -- Section 7(a) of S. 1014 requires the Office of Management and Budget (OMB) to issue an annual report including the number of fines or penalties actually imposed and collected by federal agencies. This provision is extremely important, and long overdue. No such data collection currently exists. Indeed, there is no central publicly-available source of information on regulatory violations and white-collar crime.

Such information gathering is absolutely vital if the Congress and public are to assess and act to protect safety and health. A central data base will provide insight into whether existing deterrence mechanisms are working, whether enforcement is vigorous, whether infractions are increasing or diminishing. It will help Congress conduct rigorous oversight and enact new legislation as necessary.

In addition, this data collection is eminently sensible from a management perspective. Total fines, penalties and forfeitures for FY 1986 exceeded $420 million (not including tax penalties). No business could function if headquarters did not know how or why that much money was coming into the treasury; yet when it comes to collection of fines by the federal government, the home office -- not to mention the public -- is in the dark.

Conclusion

This legislation is not the ultimate solution for health and safety abuses. Ensuring that penalties keep pace with inflation is certainly a necessary step toward assuring a responsible marketplace. But Congress must also systematically reassess whether these penalties are high enough in the first place. After all, a NHTSA fine of $1000 raised to $3,560 is an improvement -- but is still dwarfed by the profitability and size of the auto industry.

And these penalties must not merely be on the books; they must be used. Too many regulatory agencies have failed to use the tools already given to them by the law. At the Consumer Product Safety Commission, for example, staff has been cut by 40 percent, enforcement has fallen off, and rulemaking has slowed to a crawl. These problems would remain if this legislation became law. Finally, we have long argued that civil penalties are not sufficient. Corporations and their managers will be deterred from risky and harmful activities only if they face criminal prosecution as well. Passage of S. 1014 should be the beginning, not the end, of a comprehensive congressional effort to reassess how to rein in irresponsible private sector behavior that threatens the economic or physical well being of the citizenry.

In conclusion, we support this legislation as a commonsense, modest and necessary step towards preserving the integrity of the regulatory enforcement system. We urge the committee to pass this legislation without delay -- so we can quickly stanch the hemorrhaging in value of federal penalties and fines.

TESTIMONY OF
JIM E. LAPPING
DIRECTOR OF SAFETY AND HEALTH
BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO
BEFORE THE
SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
CONCERNING
THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1987

Mr. Chairman and members of the Subcommittee: My name is Jim Lapping. I am the Director of the Safety and Health for the Building and Construction Trades Department, AFL-CIO and I am here today representing the Department and the approximately 6 million members of the 16 national and international unions affiliated with the Department.

Thank you very much for inviting me to appear before you today to lend the Department's wholehearted support of the Federal Civil Penalties Inflation Adjustment Act of 1987. My expertise is in the area of safety and health and my remarks are primarily addressed to the urgent need for the application of this legislation to the Occupational Safety and Health Act. However, common sense tells me that this legislation will be of public benefit as it applies to all Federal civil penalties.

Before answering the specific questions put to me by the Subcommittee, I would like to give you some background on the Department's involvement in the field of occupational safety and health and explain why the Department is so concerned about the safety of employees in the construction industry today.

The Department was established back in 1908. One of the express objects and principles of the Department, as set forth in its Constitution, is: "To promote the development of health and safety practices and procedure to the end of protecting the health and safety of tradesmen in the building and construction industry."

The Department has a standing Safety and Health Committee, with representatives participating from the affiliated unions. The Department and the Committee have been very active in attempting to promote and improve safe working conditions in the construction industry. This involvement has covered a range of activities from establishing labor-management cooperative safety programs, training and education, administrative and judicial action to ensure that standards issued by OSHA are responsive to the needs of employees, and legislative action to attempt to strengthen Federal, state and local government involvement in the field of construction safety.

The Department has become increasingly concerned over the years as it has become apparent that the passage of the OSH Act and the establishment and administration of OSHA have not succeeded in creating a safer and more healthful workplace. In 1969, just prior to the passage of the OSH Act, construction workers constituted 4% of the total workforce and accounted for 15% of the total fatalities. Today, construction workers constitute 5% of the total workforce and account for 26% of the fatalities. Approximately 2,500 construction workers are killed each year in the United States. Indeed, during recent oversight hearings before the House Subcommittee on Health and Safety, there was unanimous consensus among labor, industry and OSHA, that there is an urgent need to stem the tide of illnesses, injuries, and deaths in the construction industry.

No worker should be subjected to the risks inherent in the industry when such risks are avoidable. And, the risks are avoidable if employees, employers, OSHA, state and local governments, and Congress are willing to take the necessary steps. The legislation before this Subcommittee today is one of those necessary steps.

I will attempt, at this point, to answer the questions put before the Department by this Subcommittee.

1. Should civil penalties be adjusted for inflation? If so, how often should the adjustment be made and should any penalties be excluded?

The idea of adjusting civil penalties to reflect the inflation rate is one of the most common-sense ideas to come out of Congress in some time. When Congress enacts legislation that contains civil penalties, those penalties are set at a certain figure that Congress concludes will achieve the desired objective. That figure is computed using the value of money at that time. The value of money is continually changing, however, and if the penalty does not change correspondingly, the desired objective will not be met. In effect, it is inaccurate to state that this legislation would raise or lower civil penalties. Rather, it would permit the effect of the penalties to remain constant over time. In other words, the penalty would ideally continue to meet the Congressional intent in enacting the penalty.

Congress cannot realistically be expected to be able to reevaluate civil penalties and adjust them individually as needed. The legislative process is too time consuming and cumbersome to permit that kind of adjustment on a continuing basis. Furthermore, enacting a built-in system, such as in this Act, for maintaining the full force and effect of a penalty will free up Congress' time to work on other worthy legislation.

Speaking particularly to the penalties in the construction industry under the OSH Act, the need for increased penalties is readily apparent to everyone in the industry. At the oversight hearings mentioned previously, the National Constructors Association testified that the OSH Act should be modified to "[i]ncrease the penalty base for serious, repeat serious or willful violations - larger penalties tend to be a deterrent for repeat violations." When employer associations begin advocating higher penalties there can be no question that such a change is long overdue.

The Department believes that the penalties established in 1970 were inadequate to do the job, but they have become more and more inadequate as the cost of living has increased. Under the OSH Act, an employer who willfully or repeatedly violates the Act is subject to a penalty of only $10,000. A serious violation can result in a $1,000 penalty. These kinds of penalties are not adequate to cause all employers to take the necessary steps to ensure that employees are provided a safe and healthful workplace. In fact, the penalties are so small that many employers pay the fines out of their overhead costs at their headquarters without any repercussion at the jobsite or to the individual in the company responsible for the violation. In other words, there is no real accountability because employers feel that it is more economical to continue to pay penalties when violations are found than to take the steps necessary to ensure that violations are not committed. I should point out that, although OSHA has recently issued some significant citations -- most particularly against the employers involved in the L'Ambiance Plaza collapse in Bridgeport, Connecticut where 28 construction workers were killed last May -- it remains to be seen whether these citations can be enforced. Furthermore, these citations are not representative of the situation in general, but only of high profile cases.

Obviously, the Act in question today will not increase penalties to a level satisfactory to the Department. Nonetheless, the Act will lead to some monetary increase in penalties and serve to keep penalties in line with the original intent of Congress. In 1970, when the OSH Act was enacted, the

Consumer Price Index was at 116.3. In September of 1987, the Consumer Price Index for urban wage earners was 344.4. The proportion by which the 1987 Index exceeds the 1980 Index is significant. OSHA's Field Operations Manual contains detailed instructions for the calculation of penalties. Those instructions are based on reductions from the maximum penalty authorized by the Act. If the maximum penalty increases, undoubtedly the actual penalties assessed and collected will increase in proportion.

In the Department's view, the inflationary adjustment should be made on a yearly basis. This time period appears to be the best compromise between keeping the penalties in line with inflation and avoiding burdensome administrative activities. Once the adjustment system is in place, it should not create an administrative burden to recalculate the penalties on a yearly basis.

Finally, I am unable to justify the exclusion of any penalty at this time. Congress acted to set the civil penalties, and if those penalties are not indexed to inflation, in actuality the money value of the penalty decreases yearly. That is not Congress' intent and therefore, in the absence of a statement by Congress that a particular penalty should be excluded for some reason, this Act should apply to all penalties.

2. Would an annual adjustment result in greater deterrence?

As is obvious from my previous testimony, proper deterrence is not going to be achieved without a major overhauling of the OSH Act's penalty structure. However, an inflationary increase that would almost triple the penalties under the OSH Act, would certainly cause some employers to reconsider their safety programs and methods of work. It is often difficult to pinpoint whether the cause and effect of increased penalties is greater deterrence, but the statistics seem to bear that out. For instance, in California, where the penalties for safety and health violations are the highest in the country, the accident injury rate is the lowest in the country.

Furthermore, penalties sometimes do not act as deterrents until the individual is actually assessed a penalty. Then, ideally, the penalty either educates the individual of the wrong or convinces the person that he will not always get away with the violation. As mentioned before, however, if the penalty is so small that the employer treats it as part of its overhead expenses and does not penalize the individual responsible, the penalty will not act to deter repeat offenders. This Act will cause a greater number of employers to take the enforcement arm of OSHA seriously. The Department believes that passage of this Act will result in greater deterrence.

3. To what extent would the general public actually be aware of the amount of the civil penalty through publication in the Federal Register?

The public would probably be no more or less aware of the adjusted penalty than it is presently aware of the statutory penalty. If you asked a member of the general public what the penalty for a willful violation is under the OSH Act, I would be very surprised if you got the correct response. If, however, you ask the safety manager for a major contractor, he or she would probably have the correct figure.

The Department does not view this issue as a legitimate basis for opposing the Act. If this Act is passed, employers will generally be aware of the penalty after the historical cost-of-living adjustment is made. Each subsequent year it may be unlikely that all employers will know the exact adjusted penalty but they will know that penalties are adjusted in line with inflation and they will be unable to claim surprise. Any employer that is concerned about the exact figure will have ready access to that information by reference to the Federal Register.

4. Whether or not civil penalties should be annually adjusted for inflation, should there be a requirement for a centralized reporting of the number and amounts of penalties imposed?

Yes. During hearings on this Act you may hear numerous figures thrown at you, many of them conflicting. Each of these figures may have some basis in reality, but none of them may be entirely accurate. Those of us who deal with OSHA have become increasingly frustrated by the lack of centralized reporting and recordkeeping.

The Department requests that there be centralized reporting not only of the number and amounts of penalties imposed under the OSH Act, but also of the number of citations issued by OSHA and the suggested monetary amounts of the citations. If the penalty actually imposed is keyed to the citation issued, the public and Congress will have an awareness of whether OSHA is issuing realistic citations and whether the settlements are reasonable. Furthermore, such reporting will allow OSHA and other enforcement agencies to ensure that the regional offices are consistent with each other and to ensure that instructions sent to the regional offices are understood and followed.

Accurate, centralized, and complete reporting is a necessity if the Federal agencies responsible for enforcing the civil penalties are to be held accountable for their actions.

Conclusion

The Department strongly urges this Subcommittee to give the proposed legislation its unanimous support. The Federal Civil Penalties Inflation Adjustment Act of 1987 makes good practical sense and it will result in very beneficial gains. The Act will most likely lead to a significant reduction in violations of Federal law. If that is so, who could object. Even if it does not significantly reduce the number of violations, the violators will be penalized to a greater extent and the general public will benefit by the increase in money to the government. The only potential losers under this Act are those individuals or companies that continue to violate Federal law.

Thank you very much for giving me the opportunity to present the Department's views to you today.

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, DC 20510-6250

February 3, 1988

The Honorable Laurence B. Gibbs
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Room 3000
Washington, D.C. 20224

Dear Commissioner Gibbs:

The Subcommittee on Oversight of Government Management is planning to hold a hearing in the near future on S. 1014, the Federal Civil Penalties Inflation Adjustment Act of 1987, copy enclosed. This legislation, which would affect a wide range of federal agencies, would require automatic annual increases in civil monetary penalties to ensure that the penalties keep pace with inflation. To assist in the Subcommittee's review of the bill, please provide your comments on the practicality and utility of its provisions and any suggestions for improvements. Please include in your comments, answers to the following questions.

1. Does your agency have a current list of civil monetary penalties within its jurisdiction? If easily obtained, please provide this list and indicate for each penalty:

   a. type of violation for which the penalty is imposed;

   b. dollar amount or range of the penalty; and

   c. year in which the penalty was first established or last increased.

The Honorable Laurence B. Gibbs
February 3, 1988
Page Two

2. Does your agency currently maintain records that track the number and amounts of penalties imposed? If so, please provide information on the actual number of penalties imposed and amounts collected for the last fiscal year for which the information is available.

3. Should the types of penalties imposed by your agency be adjusted for inflation? If so, how often should the adjustment be made? Please include in your answer consideration of such factors as deterrence and cost of implementation.

I would appreciate receiving your comments as soon as possible, but not later than February 18, 1988. If you have any questions about this request, please have your staff contact Larry Uhlfelder of the Oversight Subcommittee staff at 224-3682.

Sincerely,

Carl Levin

Carl Levin
Chairman

CL:ljg

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 18, 1988

The Honorable Carl Levin
Chairman
Subcommittee on Oversight of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6260

Dear Mr. Chairman:

This is in response to your letter of February 3, 1988, concerning S.1014, the Federal Civil Penalties Inflation Adjustment Act of 1987. This legislation would require federal agencies to make automatic adjustments for inflation in civil monetary penalties. You have requested comments on the bill and in particular responses to several questions concerning civil penalties imposed by this agency.

The Federal Election Commission has authority to include a provision for payment of a monetary civil penalty in a conciliation agreement concerning violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as for violations of chapters 95 and 96 of title 26, the Internal Revenue Code. The Act does not prescribe a schedule of penalty amounts, but does provide for ceilings on the amount of any penalty. For each violation, the amount of the civil penalty may not exceed the greater of $5,000, or an amount equal to any contribution or expenditure involved in that violation. For "knowing and willful" violations, the statutory ceilings are $10,000, or an amount equal to 200 percent of any contribution or expenditure involved in the violation, whichever is greatest. 2 U.S.C. §437g(a)(5)(A), (a)(5)(B). These penalty amounts were enacted in the Federal Election Campaign Act Amendments of 1976, Pub.L. No. 94-283, §109, 90 Stat. 483,484(1976). The ceiling amounts and ranges have not been changed since 1976 and were reenacted in 1980. See Federal Election Campaign Act Amendments of 1979, Pub.L. No. 96-187, §108, 93 Stat. 1358, 1360 (1980).

The cited penalties may only be included in conciliation agreements which correct or prevent violations of the statute. These agreements are the result of informal methods of conference, conciliation, and persuasion and may include single or multiple violations (2 U.S.C. §437g(a)(4)). The penalty generally is shown as a total. This process is one of negotiation, and the amount of a civil penalty is determined by considering all facts and circumstances relevant to the conduct constituting the violation including aggravating and mitigating factors. As a result of the variables in each enforcement action, the Commission has not prescribed any schedule of civil monetary penalties. Conciliation agreements when finalized are made public by the Commission, and the amount of the civil penalty imposed in a particular case will be specified in the final conciliation agreement. Thus, the civil penalties included in particular Commission conciliation agreements are not the type of monetary penalties that could easily be adjusted for inflation. In view of this, the Commission believes that it should be exempt from the provisions of S.1014.

With regard to a listing of civil penalties imposed, the Commission does maintain a record system that tracks the number and amounts of civil monetary penalties paid in enforcement matters. Enclosed is a list setting forth the civil penalties collected during fiscal year 1987.

Thank you for the opportunity to submit comments on S.1014. If the Commission can provide further information to assist the Subcommittee in this matter, please do not hesitate to contact me.

Sincerely,

Thomas J. Josefiak
Chairman

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

The Chairman

February 19, 1988

The Honorable Carl Levin
Chairman
Senate Subcommittee on Oversight of
  Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to comment on S. 1014, the Federal Civil Penalties Inflation Adjustment Act. The Act will require automatic increases in civil monetary penalties imposed by Federal agencies to ensure that they keep pace with inflation.

These responses, prepared by our staff and reviewed by the Commission, are in the order that the questions were raised. Attached also, for your convenience, are the statutory provisions which are cited in our response.

I. Civil penalties under the Consumer Product Safety Act (15 U.S.C. 2069).

1.a. Knowing violations of 15 U.S.C. 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), or (10), Consumer Product Safety Act (CPSA).

1.b. Penalty: "not to exceed $2,000 for each such violation... with respect to each consumer product involved, except that the maximum penalty shall not exceed $500,000 for any related series of violations." (15 U.S.C. 2069(a)(1). Any penalty may be compromised. (15 U.S.C. 2069(c)).

1.c. Year penalty established: 1972.

2.a. Knowing violations of 15 U.S.C. 2068(a)(3), Consumer Product Safety Act (CPSA).

2.b. Penalty: "not to exceed $2,000 for each such violation" except that "a violation of § 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations." (15 U.S.C. 2069 (a)(1)). Any penalty may be compromised. (15 U.S.C. 2069(c)).

2.c. Year penalty established: 1972.

II. Civil penalties under the Flammable Fabrics Act (15 U.S.C. 1191, et seq.).

1.a. Violations of section 3 of the Flammable Fabrics Act (15 U.S.C. 1191 et seq.). Pursuant to section 5 of the FFA (15 U.S.C. 1194), the Commission may seek penalties for violations of Commission orders under section 45(1) of the Federal Trade Commission Act. (15 U.S.C. 45(1)).

1.b. Penalty: "not more than $10,000 for each violation". "Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense". (15 U.S.C. 45(1)).

1.c. Year penalty revised: 1973.

2.a. Violations of section 3 of the Flammable Fabrics Act (15 U.S.C. 1191, et seq.). Pursuant to section 5 of the FFA (15 U.S.C. 1194), the Commission may seek penalties for knowing violations of rules and cease and desist orders under section 45(m) of the Federal Trade Commission Act. (15 U.S.C. 45(m).

2.b. Penalty: "not more than $10,000 for each violation". "In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation..." (15 U.S.C. 45(m)).

2.c. Year penalty revised: 1973.

III. In Fiscal Year 1987 (Oct. 1, 1986 -- Sept. 30, 1987), the Commission imposed three civil penalties. All three were for violations of 15 U.S.C. 2068(a)(3):

Whirlpool Corporation	$75,000
Franzus Company	$60,000
Black & Decker Corporation	$85,000

IV. We believe the maximum civil penalties the Commission is authorized to impose for violations of the laws it administers should be adjusted periodically for inflation. This will ensure that the economic deterrence Congress intended when it enacted such penalties is not diminished over time. Although most of the civil penalties assessed by the Commission to date have been compromised at less than the maximum amounts, there may be situations where the present maximum amounts would be inadequate for particularly egregious violations. While we express no opinion as to whether the best method for increasing the civil penalty limits is through an inflation adjustment or periodic review by Congress, we nonetheless express support for the notion that maximum civil penalties should be raised from time to time.

If you have any questions concerning this response, please feel free to call.

Best wishes.

Sincerely,

Terrence Scanlon
Chairman

Enclosure

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

February 22, 1988

Dear Mr. Chairman:

This letter is in response to your request for comments on questions posed to the Department regarding S. 1014, the "Federal Civil Penalties Inflation Adjustment Act of 1987." The bill would provide for automatic adjustments in federal civil monetary penalty amounts to offset the effects of inflation.

Specifically, you asked the Department to provide a list of civil monetary penalties within its jurisdiction and for information on the number and amounts of penalties imposed. The Department does have statutory authority to collect civil monetary penalties in several of its programs. We will discuss the penalty provisions that we administer in the context of the agency with responsibility for enforcing them. The following information is the best data readily available.

The Employment Standards Administration (ESA) administers a variety of laws that provide for the imposition of civil monetary penalties. The Fair Labor Standards Amendments of 1974 provided for the assessment of civil monetary penalties not to exceed $1,000 per violation for persons who violate certain child labor restrictions in the Fair Labor Standards Act (29 U.S.C. §216(e)). This provision became effective in 1975 and the statutory amount has not been increased since that time. The number and amount of penalties imposed is tracked and maintained. The actual amount of penalties imposed and collected in the past fiscal year under the provisions were $1,524,864 and $1,334,095, respectively.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides for the assessment of civil monetary penalties of not more than $1,000 for each violation of MSPA or the regulations (29 U.S.C. §1853). MSPA was signed into law in 1983 and the civil monetary penalty amounts have never been increased. During fiscal year 1987, $873,430 in civil monetary penalties was assessed and $343,775 was collected.

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA) authorizes the Department to impose appropriate penalties to assure employer compliance with the terms and conditions of employment of non-immigrant alien agricultural workers (100 Stat. 3416).

Interim regulations issued in June 1987 provide for the assessment of up to $1,000 per worker per violation against any person who has violated any portion of a work contract or the regulations under IRCA. No civil monetary penalties have been assessed as yet.

The Longshore and Harbor Workers' Compensation Act provides for several monetary penalties. A penalty of $100 may be imposed for failure of employers to file notice of final payment of compensation (33 U.S.C. §914(g)). A penalty of up to $10,000 may be assessed for the knowing and willful failure of an employer or carrier to submit a report of injury, or for filing a false report (33 U.S.C. §930(e)). This penalty amount was increased to $10,000 from $500 in 1984 by amendments to the statute. Penalties in the amount of $1,000 to $5,000 may be imposed for discrimination and/or discharge of an employee for filing a claim or testifying in relation to a claim (33 U.S.C. §948a). These penalty amounts were also increased in 1984 by statutory amendment from a $100 to $1,000 penalty range. Information on the number of penalties imposed or amounts collected in the past year was not readily available.

The Black Lung Benefits Act provides for a civil monetary penalty of $1,000 per day for failure of an employer to secure the payment of benefits (30 U.S.C. §933(d)(1)) and for a penalty of not more than $500 against an employer for failure or refusal to file required reports (30 U.S.C. §942(b)). These penalty provisions became effective in 1978 and the statutory amounts have never been increased. Information on the number of penalties imposed or amounts collected in the past year was not readily available.

In addition, two statutes administered by ESA contain liquidated damages provisions that operate as civil monetary penalties. The Contract Work Hours and Safety Standards Act provides that contractors shall be liable to the United States for liquidated damages in the sum of $10 for each day on which an individual was not paid overtime wages required by the Act (40 U.S.C. §328(b)(2)). This provision was enacted in 1962 and the amount of the penalty has not been increased since that time. The Walsh Healey Public Contracts Act provides that the responsible party shall be liable to the United States for liquidated damages in the sum of $10 per day for violation of its child labor restrictions (41 U.S.C. §36). This provision was enacted in 1936 and the amount of the penalty has not been increased since that time. No amounts were assessed under these liquidated damages provisions in the past year.

The Mine Safety and Health Administration (MSHA) has authority to assess civil monetary penalties for all violations of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. §820) and the mandatory standards issued under the Act. These penalties range from $20 to $10,000 per violation. Civil penalties were first assessed by MSHA in 1970 under the Federal Coal Mine Health and Safety Act of 1969. There has been no increase in the $10,000 maximum penalty since that time.

MSHA maintains an automated information system that tracks each civil penalty assessed. MSHA assessed over 133,000 violations and collected $10.2 million in penalties during 1987.

The Occupational Safety and Health Administration (OSHA) has authority to assess civil monetary penalties for violations of the Occupational Safety and Health Act of 1970 (29 U.S.C. §666). Specifically, these civil penalty provisions provide for: fines up to $1,000 for each serious or other-than-serious violation; fines up to $10,000 for each willful or repeated violation; fines up to $1,000 for each violation of a posting requirement; and fines up to $1,000 per calendar day beyond a stated abatement date for failure to correct. There has been no increase in the statutory amount of these penalties.

OSHA maintains records that track information on the civil penalties imposed. For fiscal year 1987, $21.4 million in penalties was imposed and $10.3 million was collected.

The Pension and Welfare Benefits Administration (PWBA) imposes civil penalties under two statutes: the Employee Retirement Income Security Act of 1974 (ERISA) and the Federal Employee Retirement System Act of 1986 (FERSA). ERISA authorizes the Secretary to impose civil penalties for certain reporting and recordkeeping violations. An employer or plan administrator who fails to report or keep the required material, without reasonable cause, shall pay a civil penalty of $10 for each employee (29 U.S.C. §1059). This penalty amount was established in 1974 and has not been changed since that time. A new ERISA provision, added by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), provides for a penalty of up to $1,000 per day for a plan administrator's failure to file a required annual report (29 U.S.C. §1132(c)(2)). This new provision is effective for reports required to be filed after 1987.

In addition, both ERISA and FERSA authorize the Secretary of Labor to assess a civil penalty against a party in interest for certain prohibited transactions (29 U.S.C.§1132(i) and 5 U.S.C. §8477(e)(1)(B)). The amount of the penalty under ERISA may not exceed 5% of the amount involved in each such transaction. Under FERSA, the penalty is set at 5%. If the transaction is not corrected in a timely manner, the amount of the penalty may not exceed 100% of the amount involved. The ERISA provision was enacted in 1974 and the FERSA provision was established in 1986.

PWBA did not assess any civil penalties in the last fiscal year since several of the penalty provisions are new and regulations are in the process of being finalized for the prohibited transaction penalty.

We hope this information will be helpful to your Subcommittee. The Department will continue its review of S. 1014, including consideration of any possible deterrent effect of an adjustment for inflation, and upon completion of this review, the Department will provide those Administration views which are to be expressed through this agency.

Sincerely,

Ann McLaughlin

ANN McLAUGHLIN

The Honorable Carl Levin
Chairman, Subcommittee on
  Oversight of Government Management
United States Senate
Washington, D.C. 20510

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

February 23, 1988

Honorable Carl Levin
United States Senate
Washington, D.C. 20510

RE: S. 1014 The Federal Civil Penalties Inflation Act of 1987

Dear Chairman Levin:

This responds to your letter of February 12, 1988, requesting information on civil penalty provisions included in statutes that are under the Interstate Commerce Commission's jurisdiction.

Enclosed is a list (Attachment A) of all monetary penalties within the Commission's jurisdiction. The list includes the type of violation, dollar amount of the penalty and the year of enactment and last increase in penalty.

Regulation of the surface transportation industry in recent years has been significantly reduced by legislation and also by implementing changes adopted by the Commission. The enforcement program comports with these relaxed regulatory requirements. Under current Commission policy, carriers are encouraged voluntarily to comply with the remaining regulations, and marginal non-compliance is frequently resolved by accepting a Consent Agreement in which a carrier agrees to discontinue its unlawful practices. Situations that require more stringent action usually are handled by injuctions and, on occasion, by the assessment of monetary penalties. During Fiscal Year 1987 17 penalties were imposed, which resulted in total assessed fines of $858,521, with the bulk of this arising from a single case.

Attachment A shows a wide range of penalties for the various statuory provisions under the Commission's jurisdiction. Most of the penalty cases, however, involve use of

Honorable Carl Levin
Page 2

the general civil penalty provisions of 49 U.S.C. §11901. Many of these provisions provide penalties between $100 and $500, which is in sharp contrast to several other listed provisions, including the newest penalty of $10,000 for unlawful lumping (49 U.S.C. §10902 (E)), that the Congress included in the Motor Carrier Act of 1980.

Notwithstanding the fact that monetary penalties are less frequently imposed today, developing cases based on small penalties often requires agency staff to document large numbers of counts to support a penalty which would realistically serve as a deterrent, and which would justify the expenditures of government resources to collect the penalty. To provide more realistic deterrents, the lower range of penalties could be statutorily increased at the outset. Subsequently, a year-to-year inflation adjustment would not appear necessary; a 5-year renew cycle might be an appropriate alternative.

Sincerely yours,

William Love
William J. Love
Acting Director

Enclosure

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
General Civil Penalties	49 U.S.C. 11901		
Failing to obey an order of the Commission.	49 U.S.C. 11901(a)	$5,000 per violation, and each day the violation continues.	June 29, 1906 34 Stat. 590
Violating a regulation or order with respect to rates, tariffs, and traffic.	49 U.S.C. 11901(b)	$500 per violation, and $25 each day the violation continues.	June 18, 1910 36 Stat. 548
Violating regulations with respect to property valuation.	49 U.S.C. 11901(c)	$500 per violation, and each day the violation continues.	March 1, 1913 37 Stat. 701
Unauthorized construction, operation, or abandonment of railroad lines.	49 U.S.C. 11901(d)	$5,000 maximum.	Feb. 28, 1920 41 Stat. 476
Violating orders or directions in an emergency situation.	49 U.S.C. 11901(e)(1)	From $100 minimum to $500 maximum per violation, and $50 each day violation continues.	May 29, 1917 40 Stat. 101
Failing to make reasonable distribution of railroad cars among coal mines.	49 U.S.C. 11901(e)(2)	$100 each violation.	Feb. 28, 1920 41 Stat. 476
Failing to make, prepare, preserve, or submit records to inspection.	49 U.S.C. 11901(f)(1)	$500 per violation and each day a violation continues.	Sept. 18, 1940 54 Stat. 918

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
Failing to permit access to lands, buildings, and equipment.	49 U.S.C. 11901(f)(2)	$100 per violation and each day a violation continues.	Sept. 18, 1940 54 Stat. 918
Incomplete or false reporting as to furnishing cars or protections against heat and cold.	49 U.S.C. 11901(f)(3)	$100 per violation and each day a violation continues.	Sept. 18, 1940 54 Stat. 918
A foreign motor carrier operating without authority, failing to report, answer truthfully, or preserve records as prescribed.	49 U.S.C. 11901(g)	$500 per violation, and $250 maximum each day the violation continues; in the transportation of passengers, $1,000 maximum per violation and $500 each additional day.	1/ Aug. 2, 1949 63 Stat. 488 2/ Sept. 20, 1982 96 Stat. 1124
Unlawful transportation of hazardous waste.	49 U.S.C. 11901(h)	$20,000 maximum per violation.	Dec. 11, 1980 94 Stat. 2810
HHG carriers recordkeeping, reporting, and operating rights violations.	49 U.S.C. 11901(i)	$500 maximum per violation, and $250 maximum each additional day.	HHG Act of 1980 94 Stat. 2011
HHG carriers violating regulations for the protection of individual shippers.	49 U.S.C. 11901(j)	$1,000 per violation, and $500 maximum each additional day.	HHG Act of 1980 94 Stat. 2021
Falsifying documents used in the transportation of HHG.	49 U.S.C. 11901(k)	$2,000 maximum per violation, and $5,000 maximum for each subsequent violation.	HHG Act of 1980 94 Stat. 2021

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
Civil penalties for accepting rebates from common carrier.	49 U.S.C. 11902	Treble the money, or treble the value of other consideration accepted as a rebate or offset.	June 29, 1906 34 Stat. 588
Civil penalty for violating rules relating to loading and unloading motor vehicles.	49 U.S.C. 11902a.(a) 49 U.S.C. 11902a.(b)	$10,000 maximum each violation. Criminal penalty: $10,000 maximum, and/or imprisoned not more than 2 years.	MC Act of 1980 94 Stat. 809
Civil penalty where a receiver or shipper of agricultural commodities requires the vehicle operator to load or unload without compensation.	49 U.S.C. 10527	$10,000 maximum each violation.	MC Act of 1980 94 Stat. 810
Criminal penalties based upon practicing discrimination, charging less than applicable tariff rate, or failing to file tariffs.	49 U.S.C. 11903	From $1,000 minimum, to $20,000 maximum, and/or imprisoned not more than 2 years.	Feb. 19, 1906 34 Stat. 587-88
Criminal penalties for granting and receiving rebates, concessions, or discrimination.	49 U.S.C. 11904	$5,000 maximum, and/or imprisoned not more than 2 years.	1/ Feb. 4, 1887 24 Stat. 382 2/ June 18, 1910 36 Stat. 549
Criminal penalty for transporting passengers without charge by rail, motor, or water.	49 U.S.C. 11905	From $100 minimum, to $2,000 maximum.	June 29, 1906 34 Stat. 584

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
Criminal penalty for evasion of motor carrier and broker regulation.	49 U.S.C. 11906	From $200 minimum to $500 maximum for first violation, and $2,000 maximum for a subsequent violation.	Aug. 9, 1935 49 Stat. 564-65
Criminal penalty for interfering with railroad car supply.	49 U.S.C. 11907	$1,000 maximum, imprisoned not more than 2 years, or both.	Sept. 1940 54 Stat. 90
Criminal penalty for unauthorized abandonment by freight forwarder.	49 U.S.C. 11908	$5,000 maximum.	May 16, 1942 56 Stat. 293
Criminal penalties for falsifying records and reports.	49 U.S.C. 11909	$5,000 maximum, imprisoned not more than 2 years, or both.	June 29, 1906 34 Stat. 594
Criminal penalties for unlawful disclosure of information.	49 U.S.C. 11910	Ranging from $100 maximum, to $50,000 maximum.	1/ June 18, 1910 36 Stat. 553 2/ Oct. 14, 1980 94 Stat. 1938
Criminal penalty relating to issuance of securities, disposition of funds, and restriction on ownership.	49 U.S.C. 11911	From $1,000 minimum, to $10,000 maximum, and/or imprisoned at least 1 but not more more than 3 years.	Feb. 28, 1920 41 Stat. 496
Criminal penalty for violation of the control and merger provisions by a non-carrier.	49 U.S.C. 11912	$5,000 maximum.	Oct. 17, 1978 92 Stat. 1462

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
Criminal penalty for disobeying a subpoena.	49 U.S.C. 11913	From $100 minimum, to $5,000 maximum and/or imprisoned not more than 1 year.	Oct. 17, 1978 92 Stat. 1463
Criminal penalty for failing to obtain certification of cost accounting system by rail carrier.	49 U.S.C. 11913a.	$50,000 minimum.	Oct. 14, 1980 94 Stat. 1938
General criminal penalties when specific penalty is not provided.	49 U.S.C. 11914	Ranging from $100 minimum, to $5,000 maximum, and/or imprisoned not more than 2 years.	Oct. 17, 1978 92 Stat. 1463
Criminal penalty for committing weight-bumping in HHG transportation.	49 U.S.C. 11917	From $1,000 minimum, to $10,000 maximum, and/or imprisoned not more than 2 years.	Oct. 15, 1980 94 Stat. 2021
REFERRAL OF CRIMINAL VIOLATIONS UNCOVERED DURING THE COURSE OF INVESTIGATION.			
Bribery of public officials and witnesses	18 U.S.C. 201	Ranging from $10,000 maximum , and/or imprisoned not more than 2 years, to $20,000 maximum or treble the thing of value (whichever is greater) and/or imprisoned not more than 15 years.	1/ June 25, 1948 62 Stat. 691 2/ Oct. 23, 1962 76 Stat. 1119

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
Conspiracy.	18 U.S.C. 371	$10,000 maximum, and/or imprisoned maximum 5 years.	June 25, 1948 62 Stat. 701
Investigate contempt of court.	18 U.S.C. 402	$1,000 maximum, and/or imprisoned not more than 6 months.	Oct. 15, 1914 38 Stat. 739
Misappropriation of carrier assets.	18 U.S.C. 660	$5,000 maximum, and/or imprisoned not more than 10 years.	July 24, 1946 60 Stat. 657
False or fraudulent filings with the government.	18 U.S.C. 1001	$10,000 maximum, and/or imprisoned not more than 5 years.	1/ Mar. 4, 1909 35 Stat. 1095 2/ June 25, 1948 62 Stat. 749
Mail Fraud	18 U.S.C. 1341	$1,000 maximum, and/or imprisoned not more than 5 years.	1/ Mar. 4, 1909 35 Stat. 1130 2/ June 25, 1948 62 Stat. 763
Wire Fraud	18 U.S.C. 1343	$1,000 maximum, and/or imprisoned not more than 5 years.	July 16, 1952 66 Stat. 722
Obstruction of agency proceedings.	18 U.S.C. 1505	$5,000 maximum, and/or imprisoned not more than 5 years.	1/ Jan. 13, 1940 54 Stat. 13 2/ June 8, 1945 52 Stat. 234
Perjury.	18 U.S.C. 1621	$2,000 maximum, and/or imprisoned not more than 5 years.	Mar. 4, 1909 35 Stat. 1111

Violation	Statutory Penalty Citation	Penalty	1/ Year Penalty was first established 2/ Year Penalty was last increased.
Subornation of perjury.	18 U.S.C. 1622	$2,000 maximum, and/or imprisoned not more than 5 years.	Mar. 4, 1909 35 Stat. 1111
Interference with commerce by threats of violence.	18 U.S.C. 1951	$10,000 maximum, and/or imprisoned not more than 20 years.	1/ June 18, 1934 48 Stat. 979-80 2/ July 3, 1946 60 Stat. 420
Interstate and foreign travel or transportation in aid of racketeering.	18 U.S.C. 1952	$10,000 maximum, and/or imprisoned not more than 5 years.	Sept. 13, 1961 75 Stat. 498
Racketeer influenced and corrupt organizations.	18 U.S.C. 1961 18 U.S.C. 1963 18 U.S.C. 1964	$25,000 maximum, and/or imprisoned not more than 20 years. Civil remedies: Treble damages and costs, including reasonable attorney's fee.	Oct. 15, 1970 84 Stat. 943
Unlawful unloading fees.	29 U.S.C. 186(b)(2)	$10,000 maximum, and/or imprisoned not more than 1 year.	June 23, 1947 61 Stat. 157
Unlawful refusals to deal, group boycotts, and impermissable transactions between corporations having interlocking directorates.	15 U.S.C. 1	$1 Million maximum if a corporation, $100,000 if an individual and/or imprisoned not more than 1 year.	1/ July 2, 1890 26 Stat. 209 2/ Dec. 21, 1974 88 Stat. 1708
	15 U.S.C. 20	$25,000 maximum for a carrier, $5,000 maximum for an individual, and/or imprisoned not more than 1 year.	Oct. 15, 1914 38 Stat. 734

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

FEB 23 1988

The Honorable Carl Levin
Chairman, Subcommittee on Oversight of
  Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Secretary Burnley has asked me to respond to your request for information about civil monetary penalties within the Department of Transportation (DOT) and the idea of indexing them in statute to keep pace with inflation, as proposed in S. 1014,

> The Federal Civil Penalties Inflation Adjustment Act of 1987.

We commend the Subcommittee for addressing the difficult question of maintaining the deterrent effect of civil monetary penalties set forth in law. Only recently, former Secretary Dole sought an increase in the maximum civil monetary penalty for violations of the safety titles of the Federal Aviation Act of 1958 by commercial operators, because the $1,000 maximum penalty per violation had not changed since 1938. Congress acted quickly, and legislation effecting this change was signed by the President December 30, 1987 (P.L. 100-223).

The Department currently has outstanding a legislative proposal to increase maximum civil monetary penalties under the Federal Railroad Safety Act of 1970, and both the House and Senate have passed bills that would do so (H.R. 3743 and S. 1539, now in conference). We are contemplating similar requests for other statutes administered by the Department and its modes.

Our experience has been that the authorizing committees are responsive to justifiable requests for penalty increases. On the other hand, completely unrelated conflicts over other elements of these statutes can interfere with final passage of any corrective changes to these statutes for extended periods.

Compromises in the civil penalty level or the number of violations cited occur quite often in the settlement of an enforcement proceeding. Given that enforcement authorities can instead choose to pursue maximum penalty levels and every instance of violation, however, the actual deterrent effect of a maximum penalty can last long after inflation may have appeared to dilute it.

With these points in mind, we could not make a strong case for indexing maximum civil penalties specified by statutes we administer, particularly using the rather complex, annual method proposed by the bill. As I understand S. 1014, the monetary civil penalty expressed in law would not change, but Executive Branch agency heads would instead publish in the _Federal Register_ each year schedules of all civil penalties under their jurisdictions, adjusted in two steps for inflation that occurred since the penalty was first enacted into law. It could be difficult for those subject to our statutes to understand what the current penalty is at a particular time, and whether the applicable penalty was that in place at the time of the violation, or that in place at the time enforcement is initiated.

With respect to your request for data on penalties assessed, the Department's Federal Aviation Administration has recently compiled detailed enforcement materials on an annual basis at the direction of Congress, and our reports to date are enclosed to assist the Subcommittee. Also enclosed is a detailed summary of the Federal Railroad Administration's Fiscal Year 1987 enforcement record.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

B. Wayne Vance

Enclosure

U.S. Department
of Transportation
**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

DEC 11 1987

OFFICE OF CHIEF COUNSEL
Safety Division

RAIL SAFETY CIVIL PENALTY CASES CLOSED DURING FISCAL YEAR 1987

This report summarizes the disposition of all rail safety civil penalty cases closed during fiscal year 1987. Rail safety claims arising under the Federal Railroad Safety Act of 1970 (FRSA) were closed by settlement under authority provided by that Act. Rail safety claims arising under the older rail safety statutes (Locomotive Inspection Act, Signal Inspection Act, Hours of Service Act, Interstate Commerce Act, and Safety Appliance Acts) were closed by settlement under the authority of the Federal Claims Collection Act (FCCA). Violations of the Department's Hazardous Materials Regulations were closed by final orders of assessment issued under the Hazardous Materials Transportation Act (HMTA). These total settlements and assessments, which are summarized case by case in this report, were as follows:

FRSA	$1,246,950
FCCA	1,481,415
HMTA	646,750
Total Civil Penalties	$3,375,115

The Rail Safety Statutes and Regulations

In the 1890's, Congress began regulating the railroad industry for safety purposes by enacting narrowly drawn laws to deal with discrete rail safety issues such as safety appliances and locomotive inspection. FRA has issued implementing regulations and/or interpretations under each of these statutes.

Having determined the need for more comprehensive regulation, Congress enacted the Federal Railroad Safety Act of 1970, which conferred on the Secretary of Transportation broad rulemaking authority over "all areas of railroad safety." FRA has exercised this authority by issuing rules concerning track, freight cars, operating practices, radio communications, rear end markers, rail accident/incident reporting, and glazing of windows on locomotives, cabooses, and passenger cars.

In 1974, to better address safety issues related to the transportation of hazardous materials, Congress enacted the Hazardous Materials Transportation Act, which added civil penalties to the criminal penalties already in the law. HMTA regulations, although generally issued by DOT's Research and Special Programs Administration, are enforced by the DOT administration responsible for each mode of transportation. Thus, FRA enforces the Hazardous Materials Regulations related to the transportation of hazardous materials by rail.

The Civil Penalty Process

FRA and state rail safety inspectors submit reports alleging violations of federal safety laws and regulations to the Safety Division of the Office of Chief Counsel. This Division reviews the reports for legal sufficiency, aggregates those of one type containing one or more individual claims into a single case, assesses a penalty for each claim, and transmits the case to the railroad or shipper under a penalty demand letter or, if a hazardous materials case, a Notice of Probable Violation. After a respondent has conducted its own investigation and formulated a position, negotiations are held during which the respondent presents defenses or arguments in mitigation, and offers of settlement or final assessment are exchanged.

The Hazardous Materials Transportation Act specifically prescribes those factors that should be considered in assessing penalties:

> the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

In settling cases under the rail safety statutes, FRA uses similar considerations set forth in the Federal Claims Collection Standards. If settlement cannot be reached, cases will be referred to the Department of Justice for litigation.

HMTA cases are normally concluded not by settlement, but by issuance of an order of assessment predicated on a finding of a knowing violation. Where an HMTA case cannot be resolved informally, a respondent is entitled to a formal hearing on FRA's allegations before an administrative law judge and an appeal to the Federal Railroad Administrator prior to litigation.

Report Coding

The type of violation alleged in each civil penalty case can be identified in this report using the following code:

FRSA	EO	Emergency Order
	FCS	Railroad Freight Car Safety Standards
	REM	Rear End Marking Device
	ROR	Railroad Operating Rules
	RSP	Radio Standards and Procedures
	SGS	Safety Glazing Standards
	TS	Track Safety Standards
	AR	Railroad Accidents/Incidents: Reports Classification, and Investigations
FCCA	HS	Hours of Service Act
	HSR	Hours of Service Record Keeping
	LI	Locomotive Inspection Act
	SA	Safety Appliance Acts
	SI	Signal Inspection Act
HMTA	HMT	Hazardous Materials Regulations

"POCA" means "potential collectable amount," *i.e.*, the total amount of FRA's original penalty demand for *all* claims in a case.

"PRCA" means "provable collectable amount," *i.e.*, the total amount of FRA's original penalty demand for *all* claims in a case less the amount demanded for any claims that were terminated.

Terminations generally occur where, subsequent to institution of the case, the regulatory or statutory requirement in question has been modified or abolished, or the respondent has produced evidence sufficient to rebut the allegation of violation.

Railroads are identified by their common industry designation (see the legend provided). Hazardous materials cases involving shippers are identified by a case number beginning with the letter "Z" and those involving individuals by a case number beginning with "X."

Gregory B. McBride
Assistant Chief Counsel
for Safety

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 26 1988

Honorable Carl Levin
Chairman, Subcommittee on
  Oversight of Government Management
Committee on Government Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 1014, "To increase civil monetary penalties based on the effect of inflation."

We defer to the Office of Management and Budget for the views of the Administration on this legislation.

We are in the process of compiling the information requested in your letter seeking our view on S. 1014. Enclosed is information from the Solicitor's Office - Division of General Law and the Minerals Management Service. We will forward any other information we receive as soon as it is available.

The Office of Management and Budget has advised this Department that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Rick Ventura

ASSISTANT SECRETARY Rick Ventura

Enclosures

Response of the Office of the Solicitor
- Division of General Law

A) Program Fraud Civil Remedies Act, Title VI of Public Law 99-509 (October 21, 1986) sets penalties for making false, fictitious or fraudulent claims to a Federal authority.

B) Range of penalty; not more than $5,000.00.

C) The statute was enacted in October 1986. At that time, the penalty was established.

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
WASHINGTON, DC 20240

Responses to Questions on S. 1014, Federal Civil Penalties Inflation Adjustment Act of 1987

The Minerals Management Service (MMS) has reviewed the February 9, 1988, letter and proposed legislation forwarded by the Subcommittee on Oversight and Government Management and offers the following comments:

Question 1.

Does your agency have a current list of civil monetary penalties within its jurisdiction? If easily obtained, please provide this list and indicate for each penalty:

a. Type of violation for which the penalty is imposed;

b. dollar amount or range of the penalty; and

c. year in which the penalty was first established or last increased.

Answer

Section 24 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1350) contains provisions for civil and criminal penalties for the Department's Outer Continental Shelf (OCS) leasing program.

a. Civil penalties are authorized for failure to comply with the OCSLA, a lease, license, permit, regulation, or order, issued pursuant to the Act, after notice of such failure and expiration of any reasonable time to correct it.

b. Civil penalties may be assessed for not more than $10,000 for each day for continuance of such failure to comply.

c. The provision for civil penalties was added to the OCSLA by the OCS Lands Act Amendments of 1978 dated September 18, 1978. Prior to that time, the law only provided for penalties for a knowing and willful violation. The amendments also increased the penalties available for knowing and willful violations from $2,000 per day and/or 6 months in jail to $100,000 per day and/or 10 years in jail.

Section 109 of the Federal Oil and Gas Royalty Management Act (FOGRMA) (30 CFR 241.51) provides statutory and regulatory authority for civil penalties related to the royalty management of oil and gas leases onshore.

In the MMS enforcement strategy, a civil penalty represents the last remedy before shutting in a lease or cancelling it to ensure compliance with applicable laws, rules, regulations, and lease terms. It is intended for use in those circumstances where a payor or operator has demonstrated unwillingness to voluntarily correct a violation, as defined under 30 CFR 241.51, or has committed a particular violation repeatedly over a sustained period of time without having taken action which precluded further incidences of the violation.

a. Specific violations for which civil penalties will be considered include:

-- Late reporting or nonreporting of royalty or production data for 6 consecutive months when such late reporting or nonreporting reaches or exceeds 5 percent of total lines reported during each report month.

-- Erroneous reporting for 6 consecutive months in which 5 percent or more of the total lines of data reported during each month to either the Fiscal or Production Accounting system is rejected because of errors directly attributable to the payor or operator.

-- Denial of access to records required by law, rule, regulation, or lease terms.

-- Failure to comply with an order to perform, submit documents, or provide information necessary to ensure that prompt and proper payment of oil and gas revenue has occurred and to enable timely disbursement of such payments.

-- Failure to timely submit payment of an amount associated with a report or specified on any Bill for Collection issued by the MMS, provided that payment has not been suspended by administrative action of the MMS, the Interior Board of Land Appeals, or judicial direction.

b. Dollar amount or range of the penalty:

-- up to $500 per violation per day for first 40 days;

-- up to $5,000 per violation per day thereafter; and

-- knowing or willful violations can go up to $10,000 per violation per day.

c. The year in which the penalty was first established or last increased was 1983.

Question 2.

Does your agency currently maintain records that track the number and amounts of penalties imposed? If so, please provide information on the actual number of penalties imposed and amounts collected for the last fiscal year for which the information is available.

Answer

Records have been kept for the OCS leasing program since the amendments to the Act in 1978. However, the number and total monetary amounts assessed have declined over the years following a court decision by the District Court of Eastern Louisiana. The court interpreted the law in such a way that penalties cannot be assessed until notice and a reasonable time to correct have been provided. The MMS has been reassessing the program since that time relative to those situations where health and safety factors dictate that no time is reasonable. During the last 2 to 3 years, no civil penalties have been assessed.

The FOGRMA was passed in 1983 and records for penalties imposed have been kept since then. In FY 1987, eight penalties were imposed for a total of $20,000.00.

DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

February 29, 1988

Dear Mr. Chairman:

This responds to your request for the views of the Department of the Treasury on S. 1014, the "Federal Civil Penalties Inflation Adjustment Act."

The bill would require Federal agencies to use the Consumer Price Index (CPI), published by the Department of Labor, to adjust Federally imposed penalties for inflation. It would also require the Office of Management and Budget to establish a system for recording collections of civil fines and penalties, and to prepare annual comprehensive reports.

For the reasons set forth below, the Department is seriously concerned with the administrative and policy implications of S. 1014 as it would apply to the 135 civil tax penalties contained in the Internal Revenue Code (IRC), and to civil penalties imposed under the Customs laws. Accordingly, we recommend that S. 1014 be amended to exempt civil tax penalties contained in the IRC and the Customs laws.

Congressional tax-writing committees regularly review IRC penalties to assess their effect on taxpayer compliance. Many of these penalties were increased, in some cases substantially, in 1982, 1983, 1984, and 1986. Sufficient time has not elapsed in which to evaluate the effects these increases have on compliance. Under these circumstances, we question the desirability of a mechanism to increase civil tax penalties annually without some indication that it would help maintain or improve compliance. Indeed, practitioners have already expressed concerns that the recent increases in penalties are intended to raise revenue rather than to deter noncompliance. In addition, many tax penalties are a percentage of taxes owed and/or unpaid, and are therefore sensitive to inflation.

Implementation of the Federal Civil Penalties Inflation Adjustment Act would pose serious administrative problems for the Internal Revenue Service (IRS). The bill would require agencies to use the CPI for the "12-month period ending September 30 of each calendar year." The IRS publishes the dollar amount of penalties in various publications and instructions for forms that are printed between August and October. Similarly, automated computer routines and computer generated notices are programmed during the summer months to permit system testing prior to their becoming operational by January. Unless the IRS is provided with final CPI figures well in advance of October, it could be forced to use untested computer routines in asserting penalties, and to incur substantial additional costs for training personnel, printing and publishing contracts, etc. We do not believe that the perceived benefits of annually adjusting civil tax penalties would outweigh the administrative difficulties associated with such adjustments. Moreover, adjusting civil penalties annually, in increments as small as $10, would be confusing to taxpayers and practitioners, and unnecessarily burdensome to the IRS.

Application of S. 1014 to civil penalties imposed under the Customs laws (Title 19, United States Code) is inappropriate. Such penalties generally are expressed as a percentage of the value of the underlying merchandise and are therefore already self-adjusting for inflation.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report.

Sincerely,

D. Edward Wilson, Jr.

D. Edward Wilson, Jr.
Acting General Counsel

The Honorable Carl Levin
Chairman
Subcommittee on Oversight of Government Management
United States Senate
Washington, D.C. 20510

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 1988

THE ADMINISTRATOR

The Honorable Carl Levin
Chairman, Subcommittee on Oversight
  of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

I am pleased to respond to your letter of February 3, 1988 by providing your Subcommittee with data on civil penalty assessments and collections by the Environmental Protection Agency.

The enclosed "Study of EPA Federal Penalty Practices", dated May 1987, together with a disseminating cover memorandum, dated July 29, 1987, from the EPA Assistant Administrator for Enforcement and Compliance Monitoring, provides detailed information on EPA's civil penalty assessments and collections for Fiscal Years 1975 through 1985. A second report for FY 86 and FY 87 is being prepared at this time. A copy of the latter report will be sent to your office upon its completion, which we anticipate by mid-March.

With respect to penalty provisions of the environmental laws, the Agency has not experienced difficulties in its civil penalty programs due to the inflationary erosion of statutory penalty maximum sums. With the exception of penalties assessed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the penalties assessed in environmental enforcement do not regularly approach the statutory maximum.

While the Agency usually requests the statutory maximum penalty (*e.g.*, $25,000 per day per air violation under 42 U.S.C. §7413(c)) in a complaint filed in a United States district court, that aggregate amount most typically represents a starting point from which a final penalty is either negotiated by the parties or ordered by the court. Agency experience indicates that maximum statutory penalty amounts have not limited our ability to assess penalties which conform to our established agency penalty policies.

Because these policies frequently consider each day that a violation continues to warrant an additional incremental penalty, the Agency has frequently assessed large penalties despite the apparent limitation of the statutory ceiling.

With respect to the computation of civil penalties, EPA uses a computer model for calculating the economic benefit component of a civil penalty. This computer model, known as "BEN", utilizes sophisticated financial formulae to place a dollar value on the advantage that a firm has gained by its delayed or non-compliance. The Agency regularly updates the model in light of the current inflation rate. Thus, the Agency's calculations of penalty amounts today, using the BEN model, incorporate the concept embraced within S. 1014 of taking inflation adjustments into consideration as penalty amounts are determined.

Please do not hesitate to contact the Agency if you have questions regarding the information in the enclosed report, or if you desire additional data on our BEN computer model.

Sincerely,

Lee M. Thomas

Lee M. Thomas

Enclosure

CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 4, 1988

The Honorable Carl Levin, Chairman
Subcommittee on Oversight of Government
Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

This is in reference to your letter of February 3, 1988, in which you requested responses to questions concerning the Commission's civil penalty authority. Your questions were related to S.1014, "Federal Civil Penalties Inflation Adjustment Action of 1987." Our responses to your questions are enclosed.

In our view, while there may be some benefit to periodic increases in amounts of civil penalties to reflect inflation, it is not clear that an annual increase would be an efficient way to improve the deterrent value of NRC civil penalties. This is discussed further in our response to question 3. If you have any questions on this matter, we will be pleased to arrange for a briefing by our staff.

Sincerely,

Lando W. Zech, Jr.

Lando W. Zech, Jr.

Enclosure:
As Stated

QUESTION 1: Does your agency have a current list of civil monetary penalties within its jurisdiction? If easily obtained, please provide this list and indicate for each penalty:

a. type of violation for which the penalty is imposed;

b. dollar amount or range of the penalty; and

c. year in which the penalty was first established or last increased.

ANSWER:

The Commission received its civil penalty authority in 1969 (Section 234 of the Atomic Energy Act of 1954, as amended, Public Law 91-161) (42 USC 2282). This authority was amended in 1980 (Public Law 96-295) to increase the amount of civil penalties up to $100,000 per violation per day. Previously, the maximum civil penalty was $5,000 per violation per day with a cap of $25,000 for all violations within a 30 day period.

The enclosed Appendix C to Part 2, Title 10 of the Code of Federal Regulations, entitled "Policy and Procedure for Enforcement Actions: Policy Statement," describes the NRC Enforcement Policy and sets the conditions under which civil monetary penalties may be imposed. Specifically, the Policy Statement addresses notices of violation, the different types of orders that may be issued, how to determine the severity level of each violation, and civil penalties, including the amounts of penalties and the conditions under which a civil penalty may be mitigated or escalated. Table 1A of the Enforcement Policy lists the base civil penalty amounts for different classes of violations, and Table 1B specifies the percentage of the base amount to be used depending on the severity level of the violation.

QUESTION 2:	Does your agency currently maintain records that track the number and amounts of penalties imposed? If so, please provide information on the actual number of penalties imposed and amounts collected for the last fiscal year for which the information is available.

ANSWER:

The NRC does maintain records of its civil monetary penalties. In FY 1987, 89 penalties were paid totaling $4,118,212.

QUESTION 3: Should the types of penalties imposed by your agency be adjusted for inflation? If so, how often should the adjustment be made? Please include in your answer consideration of such factors as deterrence and cost of implementation.

ANSWER:

The limit on the amount of civil penalties should be revisited periodically. However, yearly increases to reflect the inflationary increase in cost of living may create small increases in penalty amounts that may be difficult to implement and have little enforcement impact. For example, the $100,000 civil penalty amount provided for in section 234 of the Atomic Energy Act, if adjusted for inflation at a rate of 4% for three years, would result in a penalty of $112,486.40. The penalty, rounded off to the nearest $10 as proposed by section 4(b) of S 1024, would amount to $112,490. That amount would be further adjusted under the Commission's civil penalty procedures to reflect various factors such as the type of licensee and severity of the violation.

Imposing a civil penalty of $112,490, although explainable, would not substantially improve enforcement impact. Moreover, the Commission would need to revise its enforcement policy each year to reflect inflation, issue guidance, and provide training for its employees to assure consistent application and minimize errors in penalty amounts.

While the order of magnitude of the penalty amount is important, the associated publicity and the significance of the issuance of a civil penalty (i.e., more than a Notice of Violation) contribute significantly to the deterrent value. Thus, increasing civil penalties to keep up with inflation each year may not necessarily be required to assure that the remedial value of the penalty is maintained.

If penalties are to be adjusted for inflation, it is suggested that the amounts be reviewed every five years rather than every year to provide for stability in the civil penalty process. In addition, the penalty amounts should be rounded off to the nearest 10% increment of the original penalty to minimize calculation error. In the example noted above of a $100,000 penalty adjusted for inflation to $112,486.40, this would result in an assessed penalty of $110,000.

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

March 17, 1988

Honorable Carl Levin
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Re: S. 1014, the "Federal Civil Penalties
Inflation Adjustment Act of 1987"
(Lautenberg)
100th Cong., 1st Sess.

Dear Mr. Chairman:

This is in response to your request of February 3, 1988 for answers to specific questions concerning this Department's experience with civil money penalties legislation and the relationship of that experience to S. 1014, the "Federal Civil Penalties Inflation Adjustment Act of 1987." That bill would require automatic annual increases in civil money penalties imposed by Federal agencies so as to adjust for inflation.

The following three statutory provisions involve HUD and provide for civil money penalties: section 611 of the National Manufactured Housing Construction and Safety Standards Act of 1974; section 421(c) of the Housing and Community Development Act of 1987; and section 3802 of the Program Fraud Civil Remedies Act of 1986.

Our answers to your questions with regard to these three statutory provisions follow.

Section 611 of the National Manufactured Housing Construction and Safety Standards Act of 1974

Section 611 of the National Manufactured Housing Construction and Safety Standards Act of 1974 provides for a civil money penalty for the violation of any provision of section 610 of the Act, or any implementing regulation or final order. Sections 610 and 611 are enclosed as Exhibit 1. The civil money penalty in section 611 was first established in 1974, when the Act became effective.

Section 611 provides that the civil money penalty is not to exceed $1,000 for the violation of any provision of section 610 or any implementing regulation or final order. In addition, each violation of a provision of section 610 or any implementing regulation or final order constitutes a separate violation with respect to each manufactured home or each failure or refusal to allow or perform an act required by section 610 or any implementing regulation or final order, except that the maximum civil money penalty may not exceed $1 million for any related series of violations occurring within one year from the date of the first violation.

We maintain records on the number and amounts of penalties imposed under section 611. Our records indicate that in the last fiscal year, we executed settlements in three cases under the Act, providing for $10,000, $2,000, and $1,000, respectively, in civil money penalties. In addition, on February 10, we filed a case in Federal court seeking civil money penalties of $1,000 for each violation in a situation involving 20,000 homes. We believe each of these homes involves at least one violation of the Act.

Section 421(c) of the Housing and Community Development Act of 1987

Section 421(c) of the Housing and Community Development Act of 1987 provides that in any judgment favorable to the United States entered under section 421, the Attorney General may recover double the value of the assets and income of a multifamily housing project when such assets and income have been used in violation of an applicable regulatory agreement or regulation, plus all costs relating to the action. Where damages are doubled, half of the resulting amount is in the nature of a civil money penalty. A copy of section 421 is enclosed as Exhibit II.

There is no dollar amount or range for the penalty. The Housing and Community Development Act of 1987 was signed into law last month. We intend to track double damages awarded under section 421(c).

Section 3802 of the Program Fraud Civil Remedies Act of 1986

Section 3802 of the Program Fraud Civil Remedies Act of 1986 provides for a civil penalty of not more than $5,000 for each false, fictitious, or fraudulent claim or written statement made by any person, as set forth in that Act. It also provides for an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim or portion of such claim which is violative of the first sentence of section 3802(a)(1)(D), unless payment by the government has not been made on such claim. The Act does not cover claims where the amount of money, property, or services involved exceeds $150,000.

There is no limitation on the amount of the civil money penalty or assessment. The Act became effective in 1986. We have not yet had any penalties or assessments under section 3802 because we have not yet implemented the Act. While proposed regulations have been issued, final regulations have not. We do, however, intend to track both penalties and assessments imposed under section 3802.

We have not commented on the practicality and utility of S. 1014 in general or with respect to the three statutory provisions which involve HUD and provide for civil money penalties, or on such factors as deterrence and cost of implementation for the following reason. It is our understanding that the President's Council on Integrity and Efficiency (PCIE), which is chaired by the Deputy Director of the Office of Management and Budget, and is composed of the 19 statutory Inspectors General and representatives of other agencies, will be reviewing all statutes authorizing civil money penalties so as to determine which ones should be indexed. We expect the PCIE to develop a position on the basis of that review, which would include recommendations on S. 1014 and its applicability to the various statutes which authorize civil money penalties.

I trust the above and the enclosed are responsive to your inquiries. Please let me know if there is any additional information you would like.

Very sincerely yours,

J. Michael Dorsey

J. Michael Dorsey

Enclosures

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

March 18 1988

Honorable Carl Levin
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

This is in reply to your request for the Department's views on S. 1014, the Federal Civil Penalties Adjustment Act of 1987.

The Department has several concerns about the bill as currently drafted, although we are sympathetic to its objectives.

The bill would automatically adjust civil monetary penalties upwards based on increases in the Consumer Price Index from the date each penalty was defined in statute. It would also require the publishing of an annual schedule of the new penalties.

In general, the civil penalty authority currently available to the Department is sufficient at this time. In the few cases where the penalties have lost their deterrence value, the adjustment required to make them effective may exceed changes due to inflation. Further, one of our civil penalties already accounts for price increases. Penalties levied against stores violating Food Stamp regulations are based on the amount of Food Stamps redeemed at the offending store. Because the number of Food Stamps issued increases with inflation, and redemption of Food Stamps increases proportionately, then most of the effects of inflation are already captured in the procedure. It is not clear how such a procedure would be affected by S. 1014.

Because S. 1014 would not improve the enforcement capabilities of the Department, its net effect could be a paperwork burden, both on the Department and persons subject to covered civil penalties. Settlement of claims might also be complicated by penalties changing during litigation.

As requested, attached is a detailed list of the Department's civil penalty authorities. Should your committee wish to take an alternative approach to the problem we would be happy to provide a list of authorities with penalties that no longer serve as a deterrent. As discussed by the Deputy Director of the Office of Management and Budget before your subcommittee on February 29, 1988, we will also be working with the President's Council on Integrity and Efficiency to provide you with additional input as you further consider this legislation.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration.

Sincerely,

Peter Myers

PETER C. MYERS
Deputy Secretary

Enclosure

United States Department of Agriculture
Statutory Authorities Containing Civil Penalties

Agricultural Marketing Service

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937
(7 U.S.C. 601 *et seq.*)
Types of Violations: Guidelines currently being developed.
Dollar Amount or Range: Up to $1,000 per day per violation.
Year Established or Increased: 1987
Cases in FY 1987: Not applicable during FY 1987.

BEEF RESEARCH AND INFORMATION ACT
(7 U.S.C. 2901-2911)
Types of Violations: Failure to collect.
Dollar Amount or Range: Up to $5,000.
Year Established or Increased: 1986
Cases in FY 1987: -0-

DAIRY PROMOTION PROGRAM OF DAIRY PRODUCTION STABILIZATION ACT OF 1983
(7 U.S.C. 4501-4513)
Types of Violations: Non-payment and non-reporting.
Dollar Amount or Range: Up to $1,000 for each violation.
Year Established or Increased: 1984
Cases in FY 1987: 31
Total Imposed: Not available.
Total Collected to Date: Not available.

EGG RESEARCH AND CONSUMER INFORMATION ACT
(7 U.S.C. 2701-2718)
Types of Violations: Non-payment and non-reporting.
Dollar Amount or Range: $500 - $5,000
Year Established or Increased: 1980
Cases in FY 1987: -0-

FEDERAL SEED ACT
(7 U.S.C. 1551-1611)
Types of Violations: Falsely labeled seed.
Dollar Amount or Range: Up to $500.
Year Established or Increased: 1939
Cases in FY 1987: Settled 30 cases under Debt Collection Act since it is less cumbersome.
Total Imposed: Not available.
Total Collected to Date: Not available.

HONEY RESEARCH PROMOTION AND CONSUMER INFORMATION ACT
(7 U.S.C. 4601-4612)

Types of Violations: Non-payment and non-reporting.
Dollar Amount or Range: $500 - $5,000 per violation.
Year Established or Increased: 1987
Cases in FY 1987: -0-

PERISHABLE AGRICULTURAL COMMODITIES ACT
(7 U.S.C. 499a-499s)

Types of Violations: Misbranding; operating without license; disciplinary actions.
Dollar Amount or Range: Up to $3,000.
Year Established or Increased: --
Cases in FY 1987: 30
Total Imposed: Not available.
Total Collected to Date: Not available.

PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT OF 1985
(7 U.S.C. 4801-4819)

Types of Violations: Non-payment and non-collection.
Dollar Amount or Range: Up to $1,000.
Year Established or Increased: 1986
Cases in FY 1987: -0-

POTATO RESEARCH AND PROMOTION ACT
(7 U.S.C. 2611-2627)

Types of Violations: Non-payment and non-reporting.
Dollar Amount or Range: $500 - $5,000 per violation.
Year Established or Increased: 1982
Cases in FY 1987: 2
Total Imposed: Not available.
Total Collected to Date: Not available.

WATERMELON RESEARCH AND PROMOTION ACT OF 1985
(7 U.S.C. 4901-4916)

Types of Violations: Non-payment and non-reporting.
Dollar Amount or Range: $500 - $5,000 per violation.
Year Established or Increased: Not yet implemented.
Cases in FY 1987: -0-

Animal and Plant Health Inspection Service

PLANT PROTECTION AND QUARANTINE

(Plant Quarantine Act, 7 U.S.C. 151-164a, 167;
Federal Plant Pest Act, 7 U.S.C. 150aa-150jj;
Mexican Border Act, 7 U.S.C. 149)

Types of Violations: Attempting to import dangerous plant material.
Dollar Amount or Range: Up to $1,000.
Year Established or Increased: 1983
Cases in FY 1987: 16,540 - Baggage
667 - Commercial
Total Imposed: $485,410 - Baggage
$112,985 - Commercial
Total Collected to Date: 99% of imposed.

ANIMAL QUARANTINE

(Animal Quarantine Laws, 21 U.S.C. 101-105, 111-131 and 134-134h;
Swine Health Protection Act, 7 U.S.C. 3801-3813)

Types of Violations: Unlawful interstate movement of livestock, feeding of untreated garbage to swine, attempting to import dangerous animal products.
Dollar Amount or Range: Up to $1,000.
Year Established or Increased: 1983 for animal quarantine.
1980 for swine.
Cases in FY 1987: 389
Total Imposed: $57,475
Total Collected to Date: $30,740

ANIMAL WELFARE ACT

(7 U.S.C. 2131-2147, 2149-2155)

Types of Violations: Failure to comply with standards for care of animals used for research, exhibition or animals sold as pets.
Dollar Amount or Range: $2,500 per violation.
$1,500 for violation of cease and desist order.
Year Established or Increased: 1986
Cases in FY 1987: 452
Total Imposed: $102,800
Total Collected to Date: $48,200

HORSE PROTECTION ACT
(7 U.S.C. 1821-1831)

Types of Violations:	Transport, exhibition, sale of sore horse.
Dollar Amount or Range:	Up to $2,000 and disqualification for owners. Suspension or revocation of accreditation for veterinarians (9 CFR 161.3).
Year Established or Increased:	1970
Cases in FY 1987:	80
Total Imposed:	$2,700
Total Collected to Date:	$6,950

Food and Nutrition Service

FOOD AND NUTRITION SERVICE
(Food Stamp Act of 1977, 7 U.S.C. 2011 note;
Food Security Act of 1985, 7 U.S.C. 1281 *et seq.*)

Types of Violations:	Acceptance of Food Stamps for ineligible items or cash.
Dollar Amount or Range:	Up to $10,000
Year Established or Increased:	1977: If disqualification of store would cause hardships to participants. 1985: If the store is sold or transferred before assigned disqualification period is served.
Cases in FY 1987:	182
Total Imposed:	$4,313,990
Total Collected to Date:	Not available.

Packers and Stockyards Administration

PACKERS AND STOCKYARDS ACT
(7 U.S.C. 181-231)

Types of Violations:	False weighing, failure to pay, price falsification, etc.
Dollar Amount or Range:	Up to $10,000 for livestock. Up to $20,000 for poultry.
Year Established or Increased:	1976 for livestock; November 1987 for poultry.
Cases in FY 1987:	100
Total Imposed:	$604,200
Total Collected to Date:	$191,482

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

March 21, 1988

The Honorable Carl Levin
Chairman
Subcommittee on Oversight of
Government Management
SH 442 Hart Senate Office Building
Washington, D.C. 20510-6250

Dear Chairman Levin:

Thank you for your letter of February 3, 1988, concerning S. 1014, the proposed Federal Civil Penalties Inflation Adjustment Act of 1987. You have requested comments on the practicality of the bill's provisions, as well as information regarding the civil monetary penalty provisions of the federal securities laws. As I explain below, S. 1014 would not affect the Commission's authority to seek civil penalties, because there is no dollar limit on the amount of penalties that the Commission is authorized to seek.

The only provision of the federal securities laws authorizing the Commission to seek civil monetary penalties is Section 21(d)(2) of the Securities Exchange Act of 1934. That section, which was added by the Insider Trading Sanctions Act of 1984, authorizes the Commission to seek the imposition of civil penalties on persons who have purchased or sold securities while in possession of material nonpublic information in a transaction (i) on or through the facilities of a national securities exchange from or through a broker or dealer, and (ii) which is not part of a public offering by an issuer of securities other than standardized options. Section 21(d)(2) has no dollar limitation on the total amount of the civil penalty which may be imposed. Rather, a district court may order payment in an amount up to three times the profit gained or loss avoided as a result of unlawful purchases or sales. The amount of the penalty is determined by the court in light of the particular facts and circumstances. Thus, S. 1014 would not affect the amount of penalties which may be awarded under Section 21(d)(2).

In the Commission's most recent fiscal year, which ended September 30, 1987, 11 persons and entities were ordered to pay civil penalties pursuant to Section 21(d)(2). The total amount of these civil penalties was $62.6 million. Two defendants accounted for all but $1 million of the penalties: Ivan F. Boesky ($50,000,000); and Kidder, Peabody & Co., Inc. ($11,618,674). Because the profits in both of those cases were far larger than the average Commission insider trading case, the amount of penalties imposed in this and future years may be lower.

One other provision in the federal securities laws provides for civil monetary penalties. However, that provision is enforced by the Department of Justice, not the Commission. Section 32(b) of the Securities Exchange Act authorizes the Department of Justice to seek fines in the amount of $100 per day against issuers who fail to file information, documents, or reports required under the periodic reporting requirements of the Act. For a variety of reasons, this provision is rarely used, and the Commission has asked Congress to either repeal Section 32(b) or substantially modify the provision. *See Hearings on H.R. 4344, H.R. 5065, and H.R. 5832 Before the Committee on Interstate and Foreign Commerce of the House of Representatives*, 77th Cong., 1st Sess. 812, 814 (1941) (statement of Commissioner Purcell); *SEC Legislation: Hearings on S. 1178, S. 1179, S. 1180, S. 1181, and S. 1182 Before a Subcommittee of the United States Senate*, 86th Cong., 352 (1959). Thus, absent other modifications to Section 32(b), S. 1014 would have little effect on the use of this section.

If I can be of any further assistance, please do not hesitate to call me.

Sincerely yours,

Daniel L. Goelzer

Daniel L. Goelzer
General Counsel

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 14, 1988

Honorable Carl Levin
Chairman
Subcommittee on Oversight of
Government Management
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of February 3, 1988, requesting information from the Department of Justice pertinent to your Committee's consideration of S. 1014, the Federal Civil Penalties Inflation Adjustment Act of 1987. In addition, this letter responds to several other questions which the Department was asked to consider by your Committee during the hearing on February 29, 1988.

In general terms, S. 1014 would establish a procedure by which the various civil money penalties which Congress has enacted in the past would be periodically adjusted to keep pace with inflation. As discussed below, this Department has reservations about the bill as currently drafted, based upon a concern that too frequent revisions and broad application to all civil penalties are unnecessary.

Your letter inquired whether the Department of Justice has a current list of civil monetary penalties within its jurisdiction and asked for a description of the misconduct addressed by the civil penalty, the amount or range of the penalty, and the year the penalty was established or last revised.

The number of existing statutes that provide for the imposition of a civil money penalty is probably impossible to determine. A computerized, but rather quick and rudimentary survey of the United States Code identified almost 400 statutory provisions in which some variation of the phrase, "civil money penalty" appeared; the phrase (or a variation of it) is used over 1,000 times.1/ Few of these penalties are directly supervised or

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1/ A listing of the results is provided for your information. The survey was made of a Department of Justice data base called JURIS, which contains the United States Code (1982). A search of WESTLAW or another comparable system should produce similar (continued...)

administered by the Department of Justice. Most civil penalties are within the jurisdiction of other agencies, which are responsible for initiating civil penalty proceedings and would be responsible for the revision of such penalties under this bill. Almost all civil penalties may become the subject of litigation that is handled by the Department of Justice, however, where some enforcement or collection proceeding becomes necessary or where the imposition of the penalty is reviewed on appeal by a Federal court.2/

A partial listing of the statutes that the Department of Justice has some role in enforcing may be found in 28 C.F.R. §§ 0.40 - 0.75 (1987) (copy attached). To illustrate the range of civil penalties associated with these statutes, a few are described below:

--- The False Claims Act, 31 U.S.C. §§ 3729-3734 (1987 Supp. IV), as amended by Congress in 1986, provides for the recovery of triple damages and civil penalties of $5,000 to $10,000 for the submission of false statements or claims to the Government or for conspiring to defraud the Government.

1/ (...continued)
results. The following search term was used: "civil or mone! w/3 penalty." It should capture all instances where the words "civil" or "money" or "monies" or "monetary" appeared within three words of "penalty." The results may include an occasional criminal penalty as well. This search would not identify alternative nomenclatures, such as civil assessment or civil fine, for example. Note further that while the phrase appears in 394 provisions of the Code, a somewhat smaller number of separate statutory schemes are actually involved. For example, the search reported that the phrase appears in Title 2, United States Code, sections 702 and 706. Both are part of a single statutory scheme to require financial disclosures by certain legislative personnel. Also a part of the same scheme, section 703(e)(2) provides for the assessment of a penalty not to exceed $5,000 for any person who makes unlawful use of such a report. This instance was not identified by the search, however, because of the different phraseology used.

2/ According to the Annual Report of the Director of the Administrative Office of the United States Courts, 160 (1985), of the 77,588 civil cases involving the United States pending in federal district courts during 1985, 3,658 involved forfeitures and penalties. This number probably includes forfeitures and penalties associated with smuggling offenses and narcotics violations, for example, as well as the type of civil penalties that the Committee is addressing, which might comprise less than half of the total.

--- The Ethics in Government Act of 1978, 5 U.S.C. app. § 201 et seq. (1982), requires certain Government executive personnel to file financial reports and imposes a $5,000 civil penalty for the failure to file, or for filing a false report.

--- The Tariff Act of 1930, as amended in 1978, 19 U.S.C. § 1592 (1982), provides for certain penalties for false customs declarations ranging from the value of the property to two times the lawful duties owed, depending on the level of misconduct.

--- Atomic Energy Act of 1954, as amended in 1980, 42 U.S.C. § 2011 (1982), authorizes the imposition of an assessment of up to $100,000 for certain licensing violations.

--- Wool Products Labeling Act of 1939, as amended, 15 U.S.C. § 68 (1982), requires that all wool products be labeled as to their content and that the manufacturer maintain appropriate records; violations may be punished by the Federal Trade Commission with a fine of up to $100 per day, collectible in a civil court action.

While the Department of course maintains an accounting system that reflects receipts and collections, these records generally do not track the number and amount of penalties imposed by specific statutory provision. For example, under even one of the most frequently used statutes, the False Claims Act, precise figures are unavailable. Recoveries under the False Claims Act and related civil fraud causes of action totalled $83.6 million for FY 87. This figure, however, cannot be broken down to identify the number of civil penalties imposed, since the penalty is only one component of the total amount recovered, and in settlements the negotiations frequently are conducted on the basis of the total payment required by the United States to satisfy its demand, without specification of the portion attributable to either damages or forfeitures. More detailed records are not kept because no apparent management purpose or administrative objective warranted the additional cost and paperwork required.

As a general proposition, the Department does not recommend requiring agencies to develop separate reporting systems for the various civil penalty statutes that exist. There are too many to warrant such a cost.

Finally, your letter asked whether civil penalties should be adjusted for inflation and, if so, how often. The Department offers the following observations for your consideration.

We would urge that civil penalty updates occur no more frequently than once every five years; indeed, once every ten years might be quite adequate. While inflation undoubtedly does depreciate the impact of some penalties, there will be many instances where the problem does not arise, at least immediately. Some civil penalties are adjusted when a specific form of misconduct attracts congressional attention, and legislation is enacted to ban or deter the conduct by threat of a civil penalty. Sometimes the legislation achieves an immediate result and, after an initial spell of enforcement, the misconduct stops. The statutes then fall into disuse because the targeted industry adopts its practices to conform and as a result there are few occasions to impose such penalties thereafter. In these cases, inflation is not a significant concern.

In addition, most civil penalties are expressed as an amount up to a maximum. One would expect that the imposition of such penalties is frequently at a level below the maximum allowable, but that the average amount imposed might tend to increase incrementally as inflation occurs in order to maintain a comparable level of punishment and deterrence. If this tendency in fact occurs, then frequent revision of the penalty amount would be unnecessary.

The above assumption is reflected in many civil penalty cases where the government alleges a continuing violation by a pattern of conduct over a substantial period of time. Such allegations generate potential liabilities that are very large. The Department's experience in such cases generally has been that courts tend to award less than the maximum allowable civil penalty. In these cases, an upwards adjustment of the size of the civil penalty for inflation would not have affected the amount recovered.

Moreover, as a general proposition, a civil penalty should not need to be adjusted if it has been the subject of congressional action within the recent past. Thus, if Congress eventually decides on a five- or ten-year review cycle, it should also provide that no adjustment is necessary if the law has been enacted or amended within a like period.

Of particular concern is the possible application of S. 1014 to the civil penalties contained in the tax code. It is estimated that there are 130 civil penalty-type provisions in the Internal Revenue Code. By congressional action in 1982, 1983, 1984, and 1986, many tax penalties were increased, sometimes substantially. Moreover, the tax writing committees are currently conducting comprehensive studies of the penalties contained in the Internal Revenue Code. Under the circumstances, there should be no need to require additional revision of the tax code under this bill. In addition, adjustments under this bill of tax penalties would create severe problems associated with the printing of IRS forms and publications that describe such penalties, and for the programming of IRS computers and training of IRS personnel in preparation for the tax filing season. For these reasons, the Department strongly recommends that penalties imposed by the Internal Revenue Code be excluded from the purview of this proposed legislation.

There are a number of important civil penalties which serve a continuing need to deter conduct harmful to societal and governmental objectives, such as the protection of consumers, threats to the environment, job related health and safety measures, and the like. These should be revised lest they become antiquated and toothless sanctions. But for the reasons discussed above, it is far from clear that all civil penalties need be part of this process. A preferable approach might identify specifically the civil penalties to be affected by the bill, leaving the remainder alone.

Our principal concern with the proposed bill is one of notice. As a result of this bill, eventually the language identifying the prohibited conduct will be found in the statute, while the size of the penalty will be found elsewhere in the Federal Register. There is obvious opportunity for confusion and mistakes, particularly on the part of those to whom the law is addressed, who seek to evaluate the consequences of certain conduct or practices that may impinge upon the law.

During the hearing, you asked that the Department consider the notice problem further and advise the Committee by supplemental response. We have had preliminary discussions with West Publishing Company regarding the kind of notice of a penalty adjustment that could be added to the published code. The editors at West indicate very informally that if adjustments were reported in the Federal Register to an identified statute, they would add a note to that effect in the United States Code Annotated as a service to their subscribers. They expressed some doubt that such a comment would be legally sufficient notice. Your staff should discuss these problems directly with Senate Legal Counsel or with the Office of Law Revision Counsel, United States House of Representatives, which apparently works closely with West Publishing Company on such questions.

During the hearing, you also asked for the Department's advice concerning the constitutionality of a legislative delegation to the Executive Branch of the power set forth in S. 1014. The general test is said to be that a delegation is constitutionally sufficient "if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority." American Power & Light Co. v. SEC, 329 U.S. 90, 105 (1946). In the case of S. 1014, Congress has set forth a precise formula which the Executive Branch would apply. Thus, the calculation of the amount of the adjustment involves little more than the "determination of facts to which the policy as declared by the legislature is to apply." Panama Refining Co. v. Ryan, 293 U.S. 388, 421 (1935). A related problem may exist, however. As introduced, S. 1014 did not define the civil penalties to which it was intended to apply. Because it is unclear which penalties were to be adjusted, the Executive Branch, not Congress, would necessarily have made the choice. Since the hearing, we have received a redraft of S. 1014 that defines a civil monetary penalty as one which has either a specific or maximum amount and is enforced by an agency in either an administrative or Federal court proceeding. This definition does not appreciably clarify the "boundaries of the delegated authority" that Congress intends.

In view of the problems discussed above, Congress should give serious consideration to amending S. 1014 to identify by specific statutory citation each civil money provision that would be subject to adjustment. This change would alleviate the notice and due process concerns and the breadth of the delegation issue that have been discussed above.

Finally, you asked whether Congress should clarify when the adjustments would apply and whether conduct that preceded the adjustment would be penalized at the new or old rate. The Department urges Congress to provide expressly whether a newly adjusted penalty applies to conduct that preceded the adjustment or only to conduct which is committed after the adjustment. To remain silent can only guarantee additional litigation.

In general, the Department supports the intent of S. 1014 but opposes the bill, as currently drafted, based upon a concern that too frequent revisions and broad application to all civil penalties are unnecessary. Nonetheless, we would be pleased to answer any other questions your Committee might have should it consider the matter further.

The Office of Management and Budget has advised this Department that it has no objections to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Th. Boyd

Thomas M. Boyd
Acting Assistant Attorney General

Enclosures

PROVISIONS OF THE UNITED STATES CODE THAT MAKE REFERENCE TO CIVIL PENALTIES

1. 02 USC -- 437g. Enforcement

2. 02 USC -- 702. Contents of reports

3. 02 USC -- 706 . Failure to file or filing false reports

4. 05 USC 1207. Hearings and decisions on complaints filed by the Special Counsel

5. NTS 05 USC 202. Contents of reports

6. NTS 05 USC 204. Failure to file or filing false reports

7. 07 USC 9. Exclusion of persons from privilege of ''contract markets''; procedure for exclusion; review by court of appeals

8. 07 USC 9a. Assessment of money penalties

9. 07 USC 13a. Nonenforcement of rules of government or other violations; cease and desist orders; fines and penalties; imprisonment; misdemeanor; separate offenses

10. 07 USC 86. Refusal of inspection and weighing services; civil penalties

11. 07 USC 136. Definitions

12. 07 USC 136l. Penalties

13. 07 USC 149. Regulation, cleaning, etc., of vehicles and materials entering from Mexico

14. 07 USC CHAPTER 7B -- PLANT PESTS

15. 07 USC 150gg. Violations

16. 07 USC CHAPTER 8 -- NURSERY STOCK AND OTHER PLANTS AND PLANT PRODUCTS

17. 07 USC 163. Violations; forgery, alterations, etc., of certificates; punishment; civil penalty

18. 07 USC 193. Procedure before Secretary for violations; complaint; hearing; intervention; report and order; service of process

19. 07 USC 213. Prevention of unfair, discriminatory, or deceptive practices

20. 07 USC 499b. Unfair conduct

21. 07 USC 4991. Violations; report to Attorney General; proceedings; costs

22. 07 USC 701 to 723. Repealed. Feb. 10, 1936, ch. 42, 49 Stat. 1106

23. 07 USC 725. Repealed. Feb. 10, 1936, ch. 42, 49 Stat. 1106

24. 07 USC 751 to 766. Repealed. Feb. 10, 1936, ch. 42, 49 Stat. 1106

25. 07 USC 801 to 833. Repealed. Feb. 10, 1936, ch. 42, 49 Stat. 1106

26. 07 USC 1314-1. Limitation on sale of tobacco floor sweepings

27. 07 USC 1444a. Corn and feed grains and cotton programs

28. 07 USC 1446. Price support levels for designated nonbasic agricultural commodities

29. 07 USC 1602. Separability of proceedings

30. 07 USC CHAPTER 51 -- FOOD STAMP PROGRAM

31. 07 USC 2021. Civil money penalties and disqualification of retail food stores and wholesale food concerns

32. 07 USC 2023. Administrative and judicial review; restoration of rights

33. 07 USC 2149. Violations by licensees

34. 07 USC 2150. Repealed. Pub. L. 94-279, 14, Apr. 22, 1976, 90 Stat. 421

35. 07 USC 2621. Enforcement

36. 07 USC CHAPTER 60 -- EGG RESEARCH AND CONSUMER INFORMATION

37. 07 USC 2714. Civil enforcement proceedings

38. 07 USC CHAPTER 62 -- BEEF RESEARCH AND INFORMATION

39. 07 USC 2908. Enforcement

40. 07 USC CHAPTER 66 -- AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE

41. 07 USC 3502. Civil penalty

42. 07 USC 3805. Civil penalties

43. 07 USC 4314. Enforcement of provisions

44. 07 USC 4510. Enforcement

45. 07 USC 4610. Enforcement

46. 07 USC 4815. Enforcement

47. 07 USC 4910. Enforcement

48. 08 USC 1229. Designation of ports of entry for aliens arriving by aircraft

49. 10 USC 1094. Licensure requirement for health-care professionals

50. 12 USC CHAPTER 2 -- NATIONAL BANKS

51. 12 USC 93 . Violation of provisions of chapter; forfeiture of franchise; personal liability of directors; civil money penalty

52. 12 USC CHAPTER 3 -- FEDERAL RESERVE SYSTEM

53. 12 USC 371b-1. Repealed. Pub. L. 96-221, title V, 529, Mar. 31, 1980, 94 Stat. 168

54. 12 USC 504 . Civil penalty

55. 12 USC 505 . Civil penalty respecting depository, reserve, etc., requirements; amount; hearing; review; action by Attorney General; regulations

56. 12 USC 1425b. Rate of interest payable on deposits, shares or withdrawable accounts by members, insured institutions and other nonmember financial institutions

57. 12 USC 1464. Thrift institutions

58. 12 USC 1730. Termination of insurance and enforcement provisions

59. 12 USC 1730a . Regulation of holding companies

60. 12 USC 1785 . Requirements governing insured credit unions

61. 12 USC 1786 . Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure

62. 12 USC 1817. Assessments

63. 12 USC 1818. Termination of status as insured bank

64. 12 USC 1828. Regulations governing insured banks

65. 12 USC 1847. Penalties

66. 12 USC 1884. Penalties for violations

67. 12 USC 1908. Civil penalties

68. 12 USC 1953. Recordkeeping and procedures

69. 12 USC 1955. Civil penalties

70. 12 USC 1972. Certain tying arrangements prohibited; correspondent accounts

71. 12 USC 2268. Penalty

72. 12 USC 3909. General authorities

73. 15 USC CHAPTER 1 -- MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

74. 15 USC 15e. Distribution of damages

75. 15 USC 18a. Premerger notification and waiting period

76. 15 USC 21. Enforcement provisions

77. 15 USC 45. Unfair methods of competition unlawful; prevention by Commission

78. 15 USC 56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General

79. 15 USC CHAPTER 2B -- SECURITIES EXCHANGES

80. 15 USC 78u. Investigations and actions

81. 15 USC 687g. Penalties and forfeitures

82. 15 USC 717. Regulation of natural gas companies

83. 15 USC 719i. Supplemental enforcement authority

84. 15 USC 754. Administration and enforcement; delegation of authority; civil and criminal penalties

85. 15 USC 797. Enforcement

86. 15 USC 1398. Civil penalties; Secretary's authority to compromise

87. 15 USC 1415. Enforcement of notification and remedy orders

88. 15 USC 1612. Effect on government agencies

89. 15 USC 1825. Violations and penalties

90. 15 USC CHAPTER 46 -- MOTOR VEHICLE INFORMATION AND COST SAVINGS

91. 15 USC 1917. Enforcement provisions

92. 15 USC 1948. Civil penalties for violations of information requirements

93. 15 USC 1990b. Civil penalty

94. 15 USC 2002. Average fuel economy standards

95. 15 USC 2008. Civil penalty

96. 15 USC 2028. Enforcement provisions; maximum penalties; injunctive relief

97. 15 USC 2069. Civil penalties

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99. 15 USC 3414. Enforcement

100. 15 USC 3416. Judicial review

101. 15 USC 4243. Administrative authority of the Secretary; review of adverse action on license application; judicial review of final actions

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103. 16 USC 470ff. Civil penalties

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117. 16 USC CHAPTER 38 -- FISHERY CONSERVATION AND MANAGEMENT

118. 16 USC 1823. Congressional oversight of governing international fishery agreements

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120. 16 USC 1851. National standards for fishery conservation and management

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124. 16 USC 2437. Civil penalties

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129. 16 USC 3606. Violations and penalties

130. **16 USC CHAPTER 56A -- PACIFIC SALMON FISHING**

131. **16 USC 3637. Prohibited acts and penalties**

132. **18 USC 35. Imparting or conveying false information**

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139. **19 USC 1592. Penalties for fraud, gross negligence, and negligence**

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142. **19 USC 1627a. Unlawful importation or exportation of certain vehicles; inspections**

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145. **19 USC 1673c. Termination or suspension of investigation**

146. **20 USC 1094. Program participation agreements**

147. **21 USC CHAPTER 4 -- ANIMALS, MEATS, AND MEAT AND DAIRY PRODUCTS**

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149. **21 USC 117 . Penalties for transportation of diseased livestock or live poultry**

150. **21 USC 122. Offenses; penalty**

151. 21 USC 127. Transportation from quarantined State, Territory, etc.; penalty

152. 21 USC 134e. Enforcement provisions

153. 21 USC 135a. Smuggling penalties

154. 21 USC 842. Prohibited acts B

155. 21 USC 847. Additional penalties

156. 21 USC 961. Prohibited acts B

157. 21 USC 964. Additional penalties

158. 22 USC 2778. Control of arms exports and imports

159. 22 USC CHAPTER 46 -- INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY

160. 22 USC 3105. Enforcement

161. 26 USC 982. Admissibility of documentation maintained in foreign countries

162. 26 USC 1275. Other definitions and special rules

163. 26 USC 6103. Confidentiality and disclosure of returns and return information

164. 26 USC 6206. Special rules applicable to excessive claims under sections 6420, 6421, and 6427

165. 26 USC 6420. Gasoline used on farms

166. 26 USC 6421. Gasoline used for certain nonhighway purposes or by local transit systems

167. 26 USC 6427. Fuels not used for taxable purposes

168. 26 USC 6675. Excessive claims with respect to the use of certain fuels

169. 26 USC 6677. Failure to file information returns with respect to certain foreign trusts

170. 26 USC 6679. Failure to file returns, etc., with respect to foreign corporations or foreign partnerships

171. 26 USC 6682. False information with respect to withholding

172. 26 USC 6687. Failure to supply information with respec to place of residence

173. 26 USC 6689. Failure to file notice of redetermination of foreign tax

174. 26 USC 6697. Assessable penalties with respect to liability for tax of real estate investment entities

175. 26 USC 6702. Frivolous income tax return

176. 28 USC 1581. Civil actions against the United States and agencies and officers thereof

177. 28 USC 1582. Civil actions commenced by the United States

178. 28 USC 1875. Protection of jurors' employment

179. 28 USC 2461. Mode of recovery

180. 28 USC 2462. Time for commencing proceedings

181. 28 USC 2631. Persons entitled to commence a civil action

182. 28 USC 2636. Time for commencement of action

183. 28 USC 2643. Relief

184. NTS 28 USC 302. Contents of reports

185. NTS 28 USC 304. Failure to file or falsifying reports

186. 29 USC 216. Penalties

187. 29 USC 666. Civil and criminal penalties

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190. 29 USC 1059. Recordkeeping and reporting requirements

191. 29 USC 1132. Civil enforcement

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193. 29 USC 1872. Transition provision

194. 30 USC CHAPTER 22 -- MINE SAFETY AND HEALTH

195. 30 USC 815. Procedure for enforcement

196. 30 USC 820. Penalties

197. 30 USC 933. Duties of operators in States not qualifying under workmen's compensation laws

198. 30 USC 942. Miner benefit entitlement reports; penalty for failure or refusal to file

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202. 30 USC 1416. Denial of certification of applications and of issuance, transfer, suspension, and revocation of licenses and permits; suspension and modification of activities

203. 30 USC 1462. Civil penalties

204. 30 USC 1465. Liability of vessels

205. 30 USC CHAPTER 29 -- OIL AND GAS ROYALTY MANAGEMENT

206. 30 USC 1719. Civil penalties

207. 30 USC 1720. Criminal penalties

208. 30 USC 1734. State suits under Federal law

209. 30 USC 1736. Shared civil penalties

210. 31 USC 3729. False claims

211. 31 USC 3730. Civil actions for false claims

212. 31 USC 5321. Civil penalties

213. 31 USC 5323. Rewards for informants

214. 31 USC CHAPTER 93 -- SURETIES AND SURETY BONDS

215. 31 USC 9308. Civil penalty

216. 33 USC 495. Violations of orders respecting bridges and accessory works

217. 33 USC 499. Regulations for drawbridges

218. 33 USC 502. Alteration, removal, or repair of bridge or accessory obstructions to navigation

219. 33 USC 533. Penalties for violations

220. 33 USC 914. Payment of compensation

221. 33 USC 930. Reports to Secretary

222. 33 USC 944. Special fund

223. 33 USC 948. Laws inapplicable

224. 33 USC 1001 to 1011. Repealed. Pub. L. 96-478, 12, Oct. 21, 1980, 94 Stat. 2303

225. 33 USC 1208. Penalties

226. 33 USC CHAPTER 25 -- PORTS AND WATERWAYS SAFETY PROGRAM

227. 33 USC 1232. Enforcement provisions

228. 33 USC 1319. Enforcement

229. 33 USC 1321. Oil and hazardous substance liability

230. 33 USC 1322. Marine sanitation devices

231. 33 USC 1323. Federal facilities pollution control

232. 33 USC 1344. Permits for dredged or fill material

233. 33 USC CHAPTER 27 -- OCEAN DUMPING

234. 33 USC 1415. Penalties

235. 33 USC 1514. Remedies

236. 33 USC 1517. Liability

237. 33 USC 1608. Civil penalties

238. 33 USC 1908. Penalties for violations

239. 33 USC CHAPTER 34 -- INLAND NAVIGATIONAL RULES

240. 33 USC 2072. Violations of Inland Navigational Rules

241. 33 USC CHAPTER 35 -- ARTIFICIAL REEFS

242. 33 USC 2104. Permits for construction and management of artificial reefs

243. 39 USC 3012. Civil penalties

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247. 42 USC 300g-3. Failure of State to assure enforcement of drinking water regulations

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250. 42 USC 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

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280. 42 USC 8220. Federal standby authority

281. 42 USC CHAPTER 92 -- POWERPLANT AND INDUSTRIAL FUEL USE

282. 42 USC 8433. Civil penalties

283. 42 USC CHAPTER 93 -- EMERGENCY ENERGY CONSERVATION

284. 42 USC 8512 . State emergency conservation plan

285. 42 USC 8513 . Standby Federal conservation plan

286. 42 USC 8521 . Minimum automobile fuel purchase measures

287. 42 USC 9152. Remedies and penalties

288. 42 USC 9609. Civil penalties

289. 43 USC 1350. Remedies and penalties

290. 43 USC CHAPTER 36 -- OUTER CONTINENTAL SHELF RESOURCE MANAGEMENT

291. 43 USC 1812. Offshore Oil Pollution Compensation Fund

292. 43 USC 1822. Penalties

293. 45 USC 39. Penalty for failure to make report

294. 45 USC CHAPTER 4 -- CARE OF ANIMALS IN TRANSIT

295. 45 USC 74. Penalty recoverable by civil action; duty of United States attorneys to prosecute

296. 45 USC CHAPTER 13 -- RAILROAD SAFETY

297. 45 USC 436. Enforcing compliance with Federal railroad safety rules, regulations, orders, and standards

298. 45 USC 438. Civil penalties

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300. 46 USC 2107. Civil penalty procedures

301. 46 USC 2108. Refund of penalties

302. 46 USC 2302. Penalties for negligent operations

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304. 46 USC 3102. Exposure suits

305. 46 USC 3302. Exemptions

306. 46 USC 3318. Penalties

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309. 46 USC 3506. Copies of laws

310. 46 USC 3718. Penalties

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317. **46 USC 8102. Watchmen**

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321. **46 USC 8304. Implementing the Officers' Competency Certificates Convention, 1936**

322. **46 USC 8502. Federal pilots required**

323. **46 USC 8503. Federal pilots authorized**

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325. **46 USC 8702. Certain crew requirements**

326. **46 USC 8906. Penalty**

327. **46 USC 9308. Penalties**

328. **46 USC 10307. Posting agreements**

329. **46 USC 10308. Foreign engagements**

330. **46 USC 10309. Engaging seamen to replace those lost by desertion or casualty**

331. **46 USC 10310. Discharge**

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338. **46 USC 10711. Penalties**

339. **46 USC 10902. Complaints of unfitness**

340. **46 USC 10903. Proceedings on examination of vessel**

341. **46 USC 10907. Permission to make complaint**

342. **46 USC 11101. Accommodations for seamen**

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344. 46 USC 11104. Destitute seamen

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353. 46 USC CHAPTER 14 -- INSPECTION OF STEAM VESSELS

354. 46 USC 420. Permits exempting specific cargo-carrying vessels in Alaska from inspection, etc., requirements

355. 46 USC 466c. Export of horses

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357. 46 USC 815. Discriminatory acts prohibited

358. 46 USC 817 . Carriers in interstate commerce to establish, observe, and enforce reasonable rates and regulations

359. 46 USC 817d. Financial responsibility of owners and charterers for death or injury to passengers or other persons

360. 46 USC 817e. Financial responsibility for indemnification of passengers for nonperformance of transportation

361. 46 USC 820. Reports by carriers required

362. 46 USC 831. Civil and criminal penalties

363. 46 USC 844. Schedule of rates; filing; posting; availability; incorporation by reference in short form documents; penalties for violations

364. 46 USC CHAPTER 27 -- MERCHANT MARINE ACT, 1936

365. 46 USC 1122a. Vessel utilization and performance reports; filing; civil penalty; lien upon vessel; remission or mitigation of penalty

366. 46 USC CHAPTER 34 -- SAFE CONTAINERS FOR INTERNATIONAL CARGO

367. 46 USC 1505 . Penalties

368. 46 USC CHAPTER 36 -- INTERNATIONAL OCEAN COMMERCE TRANSPORTATION

369. 46 USC 1712. Penalties

370. 46 USC 1714. Reports and certificates

371. 49 USC 521. Civil penalties

372. 49 USC 10527. Written contracts pertaining to certain interstate movements by motor vehicle

373. 49 USC 10529. Limited authority over cooperative associations

374. 49 USC 10927. Security of motor carriers, brokers, and freight forwarders

375. 49 USC CHAPTER 119 -- CIVIL AND CRIMINAL PENALTIES

376. 49 USC 11901 . General civil penalties

377. 49 USC 11902 . Civil penalty for accepting rebates from common carrier

378. 49 USC 11902a. Penalties for violations of rules relating to loading and unloading motor vehicles

379. 49 USC 11905 . Transportation of passengers without charge

380. 49 USC 1. Repealed. Pub. L. 95-473, 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470; Pub. L. 96-258, 3(b), June 3, 1980, 94 Stat. 427

381. 49 USC 1a. Repealed. Pub. L. 95-473, 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

382. 49 USC 1371. Certificate of public convenience and necessity

383. 49 USC 1471 . Civil penalties; notice and hearing; compromise; liens

384. 49 USC 1473 . Venue and prosecution of offenses; procedures in respect of civil and aircraft piracy penalties

385. 49 USC 1474. Violations of section 1509

386. 49 USC 1679a. Penalties

387. 49 USC 1809. Penalties

388. 49 USC CHAPTER 29 -- HAZARDOUS LIQUID PIPELINE SAFETY

389. 49 USC 2007. Penalties

390. 49 USC 2618. Civil penalties

391. 50 USC 1705 . Penalties

392. 50 USC 24. Payment of taxes and expenses by Alien Property Custodian

393. 50 USC 2410 . Violations

394. 50 USC 2412 . Administrative procedure and judicial review

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, DC 20510-6250

March 8, 1988

The Honorable Joseph R. Wright, Jr.
Chairman
President's Council on Integrity and Efficiency
Executive Office Building
Washington, D.C. 20503

Dear Mr. Wright:

Thank you for your testimony at the Senate Subcommittee on Oversight of Government Management hearing on S.1014, the Federal Civil Penalties Inflation Adjustment Act. In your testimony you stated that S. 1014 is a good piece of legislation and that it should be passed. However, you recommended that we delay acting on this legislation long enough to allow the President's Council on Integrity and Efficiency (PCIE) to do a study of civil monetary penalties that would help the Subcommittee make decisions on several issues raised at the hearing. You indicated that a study could be completed by May 1, 1988.

You said your study would include all agencies with statutory Inspectors General and added later that Treasury and Justice could be included as well. We would appreciate their inclusion.

In addition to the proposed study questions that you submitted for the record, I would like the PCIE to address the following questions:

1. How often should the adjustment be made to civil monetary penalties and should any penalties be excluded?

2. Should we allow the responsible agency head to exempt penalties from the automatic adjustment called for in the bill?

3. The bill requires each individual agency to be responsible for adjusting penalties within its jurisdiction and publishing them in the Federal Register. Would it be more efficient to have OMB, the PCIE, or some other organization collect the information, calculate the increases and have them publish an overall list in the Federal Register?

4. Have there been any instances where a congressional committee has made an explicit decision not to increase a civil monetary penalty? Please include the details of any such instances.

We have already started working on addressing some of the concerns raised in the hearing and have developed a draft substitute bill. A copy is enclosed for your information. In addition, as soon as the printed hearing record is available, we will see that a copy is sent to you. Should you have any questions, please have your staff contact Larry Uhlfelder of the Oversight Subcommittee staff at 224-3682. Thank you for help in this important matter.

Sincerely,

Carl Levin

Carl Levin
Chairman

cc: Richard P. Kusserow
Stuart E. Schiffer

Enclosure

AMENDMENT NO. ____ Calendar No. ____

Purpose: To increase civil monetary penalties based on the effect of inflation.

IN THE SENATE OF THE UNITED STATES—100th Cong., 2d Sess.

S. 1014

To increase civil monetary penalties based on the effect of inflation.

Referred to the Committee on ______________________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. ______________

Viz:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Civil Penalties Inflation Adjustment Act of 1988".

FINDINGS AND PURPOSES

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring

violations, and furthering the policy goals embodied in such laws and regulations;

(2) the effect of many civil monetary penalties has been reduced due to inflation that has occurred since Congress last set or adjusted the penalty amount;

(3) the reduction by inflation of civil monetary penalties has reduced the effect of civil monetary penalties in deterring violations and promoting compliance with the law, and has reduced revenues to the Federal Government; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSES.—The purposes of this Act are to—

(1) provide for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(1) "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

(2) "civil monetary penalty" means any penalty, fine, or other sanction that—

(A)(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law;

(B) is enforceable by an agency pursuant to Federal law; and

(C) is enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

ADJUSTMENT FOR CALENDAR YEAR 1989

SEC. 4. (a) IN GENERAL.—No later than December 1, 1988, the head of each agency shall prescribe and publish in the Federal Register a schedule of civil monetary penalties for each civil monetary penalty provided by law within the jurisdiction of the agency. Such schedule shall be effective for the year beginning after December 31, 1988, in lieu of the penalties provided in the law as of the date of the enactment of this Act.

(b) METHOD OF PRESCRIBING SCHEDULE.—The schedule of civil monetary penalties shall be prescribed by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the historical cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

(c) HISTORICAL COST-OF-LIVING ADJUSTMENT.—For purposes of subsection (b), the historical cost-of-living adjustment for each civil monetary penalty is the percentage (if any) by which—

(1) the Consumer Price Index for the month of June 1988, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set pursuant to law prior to the date of the enactment of this Act.

ADJUSTMENTS FOR CALENDAR YEARS BEGINNING AFTER 1989

SEC. 5. (a) IN GENERAL.—No later than December 1 of 1989, and no later than December 1 of every calendar year thereafter, the head of each agency shall prescribe and publish in the Federal Register schedules of civil monetary penalties which shall apply in lieu of the schedule prescribed under section 4 with respect to years beginning in the succeeding calendar year.

(b) METHOD OF PRESCRIBING SCHEDULES.—The schedule which under subsection (a), is to apply in lieu of the schedule prescribed under section 4, shall be prescribed by increasing the maximum civil monetary penalty or the range of the minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment determined under subsection (c) and shall be rounded to the nearest—

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

(c) COST-OF-LIVING ADJUSTMENT.—For purposes of subsection (b), the cost-of-living adjustment is the percentage (if any) by which—

(1) the Consumer Price Index for the month of June immediately preceding the publication of schedules of adjusted penalties under subsection (a), exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the applicable civil monetary penalty was last set pursuant to law, including any adjustment made pursuant to this Act.

REPORTING

SEC. 6. (a) REPORT BY THE OFFICE OF MANAGEMENT AND BUDGET.—No later than January 1 of each year, the Director of the Office of Management and Budget shall submit a report to the Congress on—

(1) the number and amount of civil monetary penalties imposed pursuant to each provision of law providing for such civil monetary. penalties, during the complete fiscal year preceding such report; and

(2) the number and amount of such civil monetary penalties collected during such fiscal year.

(b) REPORTS BY OTHER AGENCIES.—The Director of the Office of Management and Budget shall establish a system of reporting to be used by the agencies empowered to impose or collect civil monetary penalties to enable the Director to prepare the report described in subsection (a).

PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

MAY 2 1988

The Honorable Carl Levin
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-2202

Dear Mr. Chairman:

Enclosed is the preliminary draft report of the President's Council on Integrity and Efficiency (PCIE) study of civil monetary penalties. As you will note, we initially surveyed all agencies with statutory Inspectors General, plus the Departments of Treasury and Justice. As was agreed at the hearing, the Internal Revenue Service (IRS) and the tax code were not included. We are currently following up in the smaller agencies that do not have statutory Offices of Inspector General but are represented by the PCIE Coordinating Conference. We will provide those results to you in a subsequent report.

In your letter of March 8, 1988, you further requested that the PCIE address several additional issues:

1. **How often should the adjustment be made to civil monetary penalties and should any penalties be excluded?**

Most civil monetary penalties have ranges up to maximum amounts provided under the law. These maximum ranges provide a cushion that would obviate the need for annual updating. Therefore, the PCIE believes that adjustments are not needed more frequently than once every 5 years. Further, if Congress decides on a 5-year review cycle, it should take into consideration that no adjustment is necessary if the law has been enacted or amended within the 5 years preceding the initial historical update or the last cyclical review.

As you recall, your hearing raised the peculiarities and complexities involved with the tax code and the IRS. We therefore endorse the position that civil monetary penalties contained in the tax code should be excluded from coverage under this bill. Many tax penalties were increased by congressional action in 1982, 1983, 1984 and 1986. The tax writing committees are currently conducting comprehensive studies of the penalties contained in the Internal Revenue Code; a copy of a recent report of the tax penalties by the Joint Committee on Taxation is appended to our report. Because of the continuing close attention by the Congress, we believe it would be counterproductive to intervene in that process.

Finally, in the course of our review to date, we have found a few instances in which automatic adjustments for inflation are currently provided for in statute. Senate bill 1014 should address such penalties, either by specific exemption or general incorporation.

2. **Should we allow the responsible agency head to exempt penalties from the automatic adjustment called for in this bill?**

There appear to be problems associated with the blanket coverage of this bill as currently drafted. At the hearing, you requested the Department of Justice to provide advice concerning the constitutionality of a legislative delegation to the Executive Branch of the power set forth in S. 1014. Justice's response, which you should have received separately, advises that there may be a problem with the lack of specific boundaries of delegated authority of the bill as currently drafted. Because of this, we urge you to consider amending S. 1014 to identify by specific statutory citation each civil monetary penalty provision subject to adjustment. Such specific reference would also allay the problem of notice referred to both in my testimony and in that of the Department of Justice representative.

Consideration might also be given for future consolidation and reduction in the number of civil monetary penalties that appear to overlap. Our cursory examination of the issue leads us to conclude that this is a fertile field for review. In many cases the civil monetary penalty processes could be simplified. There appear to be a profusion of penalties in many different programs with separate administrative systems, as well as inconsistent policies, procedures and due process. Because of this and the fact that many penalties have not been updated in years, Congress may also want to consider whether this is a good area for sunset provisions.

3. **Would it be more efficient to have the Office of Management and Budget (OMB), the PCIE or some other organization collect the information, calculate the increases and have them publish an overall list in the Federal Register?**

Many of these penalties are enforced in the independent regulatory agencies. In the past, Congress has indicated reluctance for OMB to exercise direct oversight of many of these bodies. To require direct oversight by OMB in the civil monetary penalty area, whether for cyclical penalty updating or annual reporting, would appear to run counter to previous congressional expressions. For this reason, it would appear to make more sense for the individual agencies which enforce civil monetary penalties to calculate the increases and publish the updated information in the Federal Register.

By the same token, as I mentioned in my testimony, we question whether OMB is the proper agency to collect and report CMP collection information as the bill contemplates. Instead, it appears preferable for OMB to issue guidelines for individual agency reports to Congress and to report consolidated information in the President's annual management report to Congress.

4. **Have there been any instances where a congressional committee has made an explicit decision not to increase a civil monetary penalty?**

Although committee reports and the Congressional Record do not lend themselves well to this kind of review, we are not aware of any instances in which a congressional committee has made an explicit decision not to increase a civil monetary penalty. Although pending bills containing increases in penalties may have failed to pass for a variety of reasons, we are not aware of any such specific decisions against penalty increases.

In summary, the enclosed preliminary draft report presents the findings to date of our study of civil monetary penalties administered by Government agencies. We will provide an updated version of this report, including further analysis of the responses of the smaller agencies, by the end of June.

Sincerely yours,

Joseph R. Wright, Jr.
Chairman, President's Council on
Integrity and Efficiency

Enclosure

CIVIL MONETARY PENALTIES

DRAFT REPORT May 1, 1988

Prepared by the President's Council on Integrity and Efficiency for the U.S. Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs.

INTRODUCTION

Background

On April 10, 1987, Senator Lautenburg introduced S. 1014 (Federal Civil Penalties Inflation Adjustment Act of 1987). The bill would provide a regular inflation adjustment for each civil monetary penalty (CMP) and require annual reporting of the number of CMPs imposed and the status of collections. On February 29, 1988, the Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, held a hearing on S. 1014. Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget and Chairman of the President's Council on Integrity and Efficiency (PCIE), and Richard P. Kusserow, Inspector General, Department of Health and Human Services and Vice Chairman of PCIE were among the witnesses.

In his statement, Mr. Wright stated, "Statutes containing civil monetary penalties are so widespread that it is impossible at this point to say exactly how many there are." Mr. Wright proposed that the PCIE catalog CMPs throughout Federal departments and agencies and examine how they are used. Mr. Wright promised a first phase report to the Subcommittee by May 1, 1988, covering those agencies and Departments that have a statutory Inspector General (plus the Departments of Justice and Treasury) and a subsequent second phase report covering smaller agencies and regulatory bodies.

Objectives

Study issue areas were submitted to the Committee as part of the hearing record. The objectives as reflected by these study questions were to:

- catalog CMPs under each agency's jurisdiction,
- provide data on whether and when the amounts of these penalties had been adjusted by statute,
- summarize the number of penalties imposed, and
- describe how the penalties are accounted for and controlled through the point of collection.

Scope and Methodology

To catalog and describe the CMPs across the Government, we surveyed Federal agencies (Attachment A) using a brief survey instrument (Attachment B). The survey requested information for each CMP on statutory authority citation; penalty amount(s) and description; date of the last adjustments in penalty amount(s); and administrative processes for imposing, collecting and accounting for CMPs. This Phase I report summarizes the initial raw responses of the PCIE agencies. Since many agencies needed additional time to respond, no attempt was made at this stage to clarify answers or obtain missing information. Follow-up work will be done and additional responses incorporated in the Phase II report.

Since S. 1014, as introduced, did not provide a definition of CMPs, the study focused on those monetary penalties established by statute and imposed through administrative process and procedures. Since the study began, the bill has been redrafted to include the following definition of CMPs:

> "...any penalty, fine, or other sanction that (A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; (B) is enforceable by an agency pursuant to Federal law; and (C) is enforced pursuant to an administrative proceeding or a civil action in the courts..."

Using this definition, we are including only those monetary penalties which are for specific monetary amounts or have maximum amounts provided in statute. It should be noted, however, that we are not including CMPs enforced pursuant to a civil action in the Federal courts. We were unable to amend our survey definition after the survey had begun.

FINDINGS

Agencies Responding

Seventeen agencies (with 43 components) have responded thus far with reports of at least one CMP authority for which they have responsibility. A complete list of the agencies and components responding, plus the acronyms used to designate them in data tables, is contained in Appendix C. The Departments of Agriculture and Justice were unable to provide complete information for the Phase I report. Their later responses will be included in the Phase II report.

A number of the responding agencies have only one civil monetary penalty -- the recent Program Fraud Civil Remedies Act -- which is still in the process of being implemented. Thus, for this statutory CMP, as well as for other recently enacted CMPs, no actual penalties have yet been imposed, and agency processes for administering, collecting and accounting for these CMPs are still under development.

Types and Amounts of CMPs

To date respondents have reported over 150 different statutory CMPs citations. It should be noted that exact counts of CMPs are not possible at this time because of the varying specificity with which agencies listed CMP citations. Some respondents aggregated U.S. code sections while others listed each section and violation. The Phase II report will attempt to provide some consistent references for analysis purposes.

The CMPs compiled thus far describe violations in a wide range of areas, including health and medical care, transportation safety, environmental hazards, customs, plant and animal protection, import/export restrictions, land and resource management, economic sanctions and routine reporting requirements. A list of the statutes and descriptions of penalties, as reported, can be found in Appendix D.

Individual penalties range from $20 to $250,000. Penalty amounts predominate, however in the $1,000 to $10,000 ranges. Most penalties are provided with maximum amounts for each violation, but few penalties have minimum amounts. Further, some penalties not only provide maximums per violation (or per day), but also maximums for a series of related offenses. For example, the Clean Water Act (33 U.S.C 1319) contains monetary penalties amounts not to exceed $10,000 per day for each day during which certain types of violations continue, except that the maximum amount may not exceed $125,000 in total.

In addition, some penalties provide general maximum amounts plus different (usually higher) maximum amounts for specific violations within the general category described. For example, the U.S. Customs Service, under 19 U.S.C 1584, enforces CMPs on the master or owner of a vessel who does not produce a manifest to a customs officer (penalty of $1,000) or whose vessel has on board merchandise not described on the manifest (penalty of $10,000). If the unmanifested merchandise, however, consists of narcotics, the penalty can range up to $1,000 per ounce of the narcotics.

About half of the CMPs are reported to have been updated by statute at least once, at years ranging from as early as 1898 to as late as 1987. As stated before, however, an exact count is not possible in this phase of the analysis because of the varying specificity with which agencies responded.

CMPs Imposed

Eleven agencies (and 28 components within those agencies) reported a total of 172,470 CMPs imposed in FY 1987 and a total of 810,483 imposed in the last 5 years (Attachment E). Among the 28 components, the Mine Safety and Health Administration (Department of Labor) accounted for over three-fourths of those totals with the CMPs it enforces under the Federal Mine Safety and Health Act of 1977 (30 U.S.C 820).

It should be noted that a number of agencies reported that data was not available, including many who enforce a number of CMPs one would expect to be imposed numerous times per year (e.g., U.S. Coast Guard, U.S. Customs Service). During follow-up with these agencies, we will determine whether the data is not available due to the time constraints of the study, because of decentralized accounting and control or for some other reason.

The survey also asked whether the agency identifies and controls CMP collections in the agency-wide accounts receivable system. The results of these responses are shown in Appendix D. Seventeen components in eight agencies reported that their CMPs are reported to their agency-wide accounts receivable. An additional three components report some but not all types of CMPs in the accounts receivable.

The survey also asked whether CMPs were reported by the Inspector General (IG) in the semiannual report to the agency head and Congress. Only eight components in six agencies responded that their penalties are reported by the Inspector General. In some instances, these penalties are part of a larger category of reporting (e.g., status of accounts receivable). In other instances, the CMPs are reported in the IG semiannual report because the IG enforces the penalties and is thus reporting on the results of Office of Inspector General efforts.

PRELIMINARY CONCLUSIONS

Further follow-up work remains to clarify and complete responses and incorporate the additional responses from the remaining agencies. Additional work is also needed to impose some consistent specificity of penalty citation to allow for further analysis. Until that time, our conclusions are of necessity preliminary. With that in mind, however, the following are the conclusions of this review to date.

- CMPs have been authorized for a wide range of violations and prohibited conduct. As such, they effect many segments of our society from industry and commerce, to health care, to the traveling or boating public.
- CMP amounts most often range up to a maximum with some additional maximum for series of violations. As such, these maximums provide a cushion against the erosion of inflation. Few penalties have minimum amounts. The absence of minimums gives enforcement agencies a great deal of discretion in determining the amount of penalty to impose. Although actual amounts of penalties imposed was not a specific line of inquiry in our study, it is our impression that agencies seldom impose maximum penalties when they have this discretion.
- CMPs are enforced by a variety of agencies and agency components and appear not to have a central locus of responsibility. Instead, CMPs are apparently administered at an agency component or even lower level.
- Accounting and reporting also appears to be diffused, resulting in unavailability of data at the agency-wide level on the numbers of CMPs imposed.

Because of the apparent decentralized authority and processes, the civil monetary penalty area appears to be a fertile field for further study to assess the effectiveness of CMPs and the internal controls in agency CMP processes.

ATTACHMENT A

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

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Frank DeGeorge Inspector General Department of Commerce 14th and Constitution Avenue, N.W. Room 7898-C Washington, DC 20230	377-4661
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Mary F. Wieseman Special Counsel Merit Systems Protection Board 1120 Vermont Avenue, N.W. Washington, DC 20005	653-7122

ATTACHMENT B

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

ADMINISTRATIVE MONETARY PENALTY STUDY

[Please complete a study form for each administrative monetary penalty for which your Department or agency is responsible. If exact data are not available, please estimate and label your response "ESTIMATE." An administrative monetary penalty is a monetary fine or penalty which is authorized by law and imposed through administrative process and procedures.]

1. Name of Department/Agency and Component:

2. Give the statutory authority citation for the administrative monetary penalty (cite name of law and U.S. Code section).

3. Give the date of last regulations implementing this authority or date of last amendments to that regulation.

4. Describe the administrative monetary penalty (i.e., the violation for which it is imposed) and specify the amount of or other valuation method for the penalty.

5. Give the date of last statutory/regulatory adjustment of the dollar amount of the administrative penalty.

   How many times have there been such adjustments?

   ____

6. How many times has this administrative monetary penalty been imposed in the last year? ______________ In the last 5 years? _______

7. Describe in one paragraph the major steps of the administrative monetary penalty process works from point of imposition of the penalty through collection and forwarding to Treasury. Identify what agency components or components outside the agency have roles in this process.

8. Does your agency identify and control the collections of these penalties in your agency-wide accounts receivable system? If not, how are they accounted for (e.g., on accounts maintained by program office)?

9. Does the Inspector General currently report on the penalties imposed and/or collected in the OIG semiannual report? If so, is it reported separately or as a part of another reporting category?

10. Please list a contact name, title and phone number for further information, if necessary.

Remarks (use this section for further information which clarifies your answers):

ATTACHMENT C

AGENCIES/COMPONENTS ENFORCING CMPs

(Based on survey responses of members of President's Council on Integrity and Efficiency - April 1988)

AGENCY/COMPONENT	ACRONYM
DEPARTMENT OF AGRICULTURE	USDA
Agricultural Stabilization and Conservation Service	ASCS
Agricultural Marketing Service	AMS
Animal and Plant Health Inspection Service	APHIS
Federal Grain Inspection Service	FGIS
Food and Nutrition Service	FNS
Forest Service	FS
Packers and Stockyards Administration	PSA
AGENCY FOR INTERNATIONAL DEVELOPMENT	AID
Office of Inspector General	OIG
DEPARTMENT OF EDUCATION	ED
Office of Postsecondary Education	OPE
ENVIRONMENTAL PROTECTION AGENCY	EPA
Office of Air and Radiation	OAR
Office of Pesticides and Toxic Substances	OPTS
Office of Solid Waste and Emergency Response	OSWER
Office of Water	OW
GENERAL SERVICES ADMINISTRATION	GSA
Office of Inspector General	OIG
DEPARTMENT OF HEALTH AND HUMAN SERVICES	HHS
Food and Drug Administration	FDA
Health Care Financing Administration	HCFA
Office of Inspector General	OIG
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	HUD
Office of Inspector General	OIG
Office of Manufactured Housing and Regulatory Functions	OMHRF
DEPARTMENT OF THE INTERIOR	INT
Bureau of Land Management	BLM
Fish and Wildlife Service	FWS

Minerals Management Service	MMS
Office of Surface Mining Reclamation and Enforcement	SMR
DEPARTMENT OF LABOR	DOL
Employment Standards Administration	ESA
Mine Safety and Health Administration	MSHA
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	NASA
Office of Inspector General	OIG
RAILROAD RETIREMENT BOARD	RRB
Office of Inspector General	OIG
SMALL BUSINESS ADMINISTRATION	SBA
Office of General Counsel	OGC
DEPARTMENT OF STATE	STATE
Office of Inspector General	OIG
DEPARTMENT OF TRANSPORTATION	DOT
Assistant General Counsel for Aviation Enforcement and Proceedings	AEP
Federal Aviation Administration	FAA
Federal Highway Administration	FHA
Federal Railroad Administration	FRA
Maritime Administration	MARAD
National Highway Traffic Safety Administration	NHTSA
Research and Special Programs Administration	RSPA
Saint Lawrence Seaway Development Corporation	SLSDC
U.S. Coast Guard	USCG
DEPARTMENT OF THE TREASURY	TRES
U.S. Customs Service	CUSTOMS
Office of Financial Enforcement	OFE
Office of Foreign Assets Control	OFAC
U.S. INFORMATION AGENCY	USIA
Office of Inspector General	OIG
VETERANS ADMINISTRATION	VA
Office of Inspector General	OIG

CIVIL MONETARY PENALTIES AUTHORITIES

ATTACHMENT D

DEPARTMENT	COMPONENT	AUTHORITY	CITATION	ENACTMENT DATE	SANCTION	MINIMUM	NOT TO EXCEED	OTHER VALUATION METHOD	LAST ADJUSTMENT
DOD	OIG	Program Fraud Civil Remedies Act	31 USC 3801 et seq	1986	False claims or written statements		$5,000	for each claim	
SBA	OGC	Small Business Act	15 USC 636(b)	1972	Misapplication of proceeds of loan			1 1/2 times original principal of loan	—
SBA	OGC	Small Business Investment Act	15 USC 687(g)(a)	1966	Failure to file report		$100	per day that licensee fails to file	—
SBA	OGC	Small Business Investment Act	15 USC 687d	1958	Lack of cooperation in exam by licensee		$250	per day	—
STATE	OIG	Program Fraud Civil Remedies Act	31 USC 3801 et seq	1986	[no response]		(no response)		1985
VA	OIG	Program Fraud Civil Remedies Act	31 USC 3802	1986	False claims or written statements		$5,000	per claim plus assessments	—
VA	OIG	Veterans' Benefits Improvements and Health Care Authorization Act	38 USC 1819	1986	False certification by lender		$10,000		—
EPA	OSWER	Resource Conservation and Recovery Act	42 USC 6928	1976	Violation of hazardous work standards		$25,000	per day	—
					Failure to take timely corrective action		$25,000	per day	—
EPA	OPTS	Toxic Substances Control Act	15 USC 2615(a)	1976	Violations of chemical substance standards		$25,000	per day	—
EPA	OPTS	Federal Insecticide, Fungicide and Rodenticide Act	7 USC 136l(a)	1972	Violation by registrant, commercial applicator, dealers		$5,000	each offense	—
					Violation by private applicator		$500	first offense; $1,000 on additional offenses	1975
EPA	OAR	Clean Air Act, as amended	42 USC 7420	1977	Violation of state implementation laws or other violations of Act			recover economic benefit of noncompliance	—
EPA	OW	Water Quality Act	33 USC 1319	1987	Class I violation		$10,000	per violation not to exceed $25,000 total	
					Class II violation		$10,000	per violation not to exceed $125,000 total	—
EPA	OW	Safe Drinking Water Act	42 USC 300h-2	1986	Underground injections relating to Class II wells		$5,000	per day with maximum of $25,000	—
					Other underground injections		$10,000	per day with maximum of $25,000	
EPA	OW	Safe Drinking Water Act	42 USC 300g-3	1986	State fails to act w/in 30 days of violation		$5,000	up to $25,000 through judicial proceeding	—
EPA	OW	Marine Protection, Research and Sanctuary Act	33 USC 1415	1972	Ocean dumping of sludge		$50,000		—
EPA	OSWER	Comprehensive Environmental Response, Compensation and Liability Act	42 USC 9609	1986	Release of reportable quantities of hazardous substances		$25,000		—
USDA	FS		16 USC 551 31 USC 290 43 USC 1901		Unauthorized grazing use and permittee's excess grazing use	$3	$7	per head month	1980
USDA	FS	Contract Work Hours and Safety Act	40 USC 328	--	Violations of Act on procurement contracts		$10	per day per worker	1987
USDA	ASCS	Conservation Reserve Program	16 USC 3801-3844	--	Contract cancellation, termination or violation			25% of annual rental payment	1987
USDA	ASCS	Agriculture Adjustment Act	7 USC 1359	1938	Violations of Act by peanut producers			140% of the base quota support rate	1981
USDA	ASCS	Agricul Foreign Invest Disclosure Act	7 USC 3501	1978	Failure to file or inaccurate filing			25% of the fair market value of land	—
USDA	ASCS	Agricultural Adjustment Act	7 USC 1359	1938	Violations of Act or regs			100% of the basic quota support rate	1981
USDA	ASCS	Food Security Act		1985	Violation of any provision of BTP contract		$1,000		—
USDA	ASCS	Agricultural Adjustment Act	7 USC 1359	1938	Tobacco violations			75% of avg price/pound; 130% in warehouse operatio	1987
USDA	FNS	Food Stamp Act	7 USC 2011	1987	Violation of food stamp program		$10,000		1982
USDA	FNS	Food Security Act	7 USC 1281	1985	Store sold during period of disqualification		$10,000		1982
USDA	AMS	Agricultural Marketing Agreement Act	7 USC 601	1937	All federal marketing order violations, except assessments		N/A		—
USDA	AMS	Beef Research Information Act	7 USC 2901-2911	--	Failure to collect		$5,000		—
USDA	AMS	Dairy Promotion Program	7 USC 4501-4513	1983	Nonpayment and nonreporting		$1,000		—
USDA	AMS	Egg Research and Consumer Info. Act	7 USC 2701-2718		Nonpayment and nonreporting	$500	$5,000		1989
USDA	AMS	Federal Seed Act	7 USC 1551-1611		Falsely labelled seed		$500		1986
USDA	AMS	Honey Research, Promotion, and Consumer Information Act	7 USC 4601-4612		Nonpayment and nonreporting	$500	$5,000		—
USDA	AMS	Perishable Agricultural Commodities Act	7 USC 499a-499s		Misbranding; operating without a license		$2,000		1974
USDA	AMS	Pork Promotion, Research, and Consumer Information Act	7 USC 4801-4819		Nonpayment and noncollection		$1,000		—
USDA	AMS	Potato Research and Promotion Act	7 USC 2611-2627		Nonpayment and noncollection	$500	$5,000		—
USDA	AMS	Watermelon Research and Promotion	7 USC 4901-4916		Nonpayment and nonreporting	$500	$5,000		—
USDA	PSA	Packers and Stockyard Act	7 USC 193	1976	False weighing, failure to pay, price falsification		$10,000		
			7 USC 213	1976			$1,000		
			7 USC 228b-2	1987			$20,000		
USDA	APHIS	Animal Quarantine Laws	21 USC 102-105	1983	Animal quarantine violation		$1,000	per offense	1986
USDA	APHIS	Swine Health Protection Act	7 USC 3801-3813	1983	Swine health violation		$10,000	per offense	—

DEPARTMENT	COMPONENT	AUTHORITY	CITATION	ENACTMENT DATE	SANCTION	MINIMUM	NOT TO EXCEED	OTHER VALUATION METHOD	LAST AMENDMENT
USDA	APHIS	Animal Welfare Act	7 USC 2131-2159	1976	Animal welfare violations		$2,500	per offense, up to $1500 for cease and desist	—
USDA	APHIS	Horse Protection Act	15 USC 1821-1831	1976	Horse welfare violations		$2,000	per offense	—
USDA	APHIS	Plant Quarantine Act of 1912	7 USC 151-165,167	1912	Baggage violations, arrival from foreign country		$1,000		1983
USDA	APHIS	Federal Plant Pest Act of 1957	7 USC 150aa-150jj	1957	Illegal handling of foreign garbage		$1,000		
USDA	FGIS	US Grain Standards Act	7 USC 86	—	violation in respects to handling, inspection, or weighing of grain		$75,000	per violation, in addition to criminal penalties	—
DOT	OST	Federal Aviation Act	49 USC 1471	1978	Airline in violation of Title IV		$1,000	each day constitutes a separate offense	—
DOT	SLSDC	Port and Tankers Safety Act	33 USC 401	1978	Prohibits ships from operating in international waters		$25,000		—
DOT	MARAD	Merchant Marine Act	[illegible]	1936	Violation of requirements subsidy must adhere to	$500	$2,500		—
DOT	RSPA	Natural Gas Pipeline	49 USC 1671	1968	Violation of a provision other than 6 or 7(b)		$1,000	$200,000 max for related series of violations	—
					Violation of section 6 or 7(b), LNG facilities		$50,000		—
DOT	RSPA	Hazardous Material Transportation Act	49 App. USC 1801		Violation of regs of offshore gathering lines		$10,000	per day, if violation is continuing	
		Hazardous Liquid Pipeline Safety Act	49 App. USC 2001	1979	Violation of a provision		$1,000	$200,000 max for related series of violations	
DOT	FAA	Federal Aviation Act	49 USC 9	1958	Violations of aviation safety		$1,000		
DOT	FAA	Hazardous Materials Transportation Act	49 USC 1		Transportation of hazardous materials				—
DOT	FAA	Airport and Airway Safety and Capacity Expansion Act	49 USC 204	1987	Interference with aircraft accident investigations		$250,000		
					Violations of aviation safety by commercial carriers		$10,000	each violation	
DOT	USCG	General Bridge Act	33 USC 525-534	1946	Drawbridges operation over navigable waters		$1,000		—
DOT	USCG	Ports and Waterways Safety Act	33 USC 1221-1232	—	Navigation and safety port facility		$25,000	each violation	1978
DOT	USCG	Federal Water Pollution Control Act	33 USC 1321	—	Hazardous substance discharge		$5,000	each violation	—
			33 USC 1321j		Violation of pollution prevention requirements		$5,000	each violation	—
			33 USC 1322		Marine sanitation devices		$2,000	each violation	—
DOT	USCG	International Navigation Rules Act	33 USC 1601-1608	1977	Violation of rules governing conduct at sea		$5,000	each violation	1980
DOT	USCG	Act to Prevent Pollution from Ships	33 USC 1901-1911	—	Violation of oil discharge and tanker operating requirements		$25,000	each violation	—
DOT	USCG	Inland Navigational Rules Act	33 USC 2001	1980	Violation of rules governing conduct of vessels in inland waterways		$5,000	each violation	—
DOT	USCG	Federal Boat Safety Act	46 USC 1481	1971	Violations of standards for recreational vessels		$1,000	each violation	—
					Violation of construction standards, obligation to give notice, remedy		$100,000	each violation	
DOT	USCG	Commercial Vessel Safety	46 USC Subtitle II	—	Violation of commercial vessel standards for non-tankers		$5,000	each violation	1986
					Violation of commercial vessel standards for tankers		$25,000	each violation	
DOT	USCG	Vessel Documentation Act	46 USC Chapter 121	—	Violation of documentation regs		$500	each violation	1980
DOT	USCG	Hazardous Material Transportation Act	49 USC 1801	—	Carriage of non liquid bulk hazardous material		$10,000	each violation	—
DOT	FHWA	Hazardous Materials Transportation Act	49 USC 1809	—	Any violation of regs		$10,000	each violation	1984
					Any violation of regs while transporting hazardous materials		$10,000	each violation	
DOT	FHWA	Motor Carrier Safety Act	49 USC 2502	—	Recordkeeping		$500	per day, not to exceed $2,500	
					Pattern of safety violations other than recordkeeping		$1,000	each violation, not to exceed $10,000 per pattern	
					Substantial safety violation		$10,000	each violation	
DOT	NHTSA	Motor Vehicle Info and Cost Savings Act	15 USC 1901	—	Violations of bumper standards		$1,000		—
DOT	FRA	Hazardous Material Transportation Act	49 USC 1801-1811	—	Violations of requirements relating to hazardous shipment of materials		$10,000		—
DOT	FRA	Federal Railroad Safety Act	45 USC 421, 431-441	1970		$500	$2,500		1979
						$500	$2,500		1986
						$500	$2,500		1985
						$500	$2,500		1988
						$250	$2,500		1983
						$500	$2,500		1980
						$250	$2,500		1980
						$500	$2,500		1983
							$2,500		1976
						$500	$2,500		1977
							$2,500		1984
							$2,500		1986
						$1,000	$2,500		1988
DOT	FRA	Hours of Service Act	45 USC 61-64b				$500		1969
						$100	$500		1980
DOT	FRA	Accident Reports Act	45 USC 38-43			$500	$2,500		1977

DEPARTMENT	COMPONENT	AUTHORITY	CITATION	ENACTMENT DATE	SANCTION	MINIMUM	NOT TO EXCEED	OTHER VALUATION METHOD	LAST ADJUSTMENT
DOT	FRA	Signal Inspection Act	49 USC 26				$2,500		1984
							$2,500		1984
						$1,000	$2,500		1986
DOT	FRA	Locomotive Inspection Act	45 USC 22-34			$250	$2,500		1980
						$250	$2,500		1980
							$2,500		1976
DOT	FRA	Safety Appliance Act	45 USC 1-16			$1,000	$2,500		1978
						$1,000	$2,500		1978
						$1,000	$2,500		1978
DOT	FRA	Interstate Commerce Act	49 App. USC 501/2-504			$100	$500		1978
DOT	FRA	Noise Control Act	42 USC 4904	1972			$10,000		1983
DOT	NHTSA	The National Traffic and Motor Vehicle Safety Act	15 USC 1398	1966	manufacture,importation, and sale of motor vehicles and equipment that does not conform to standards, and failure to recall this merchandise		$1,000	each violation up to $800,000	1980
DOT	NHTSA	Motor Veh Info and Cost Sav Act, Tit V	15 USC 2008		Noncompliance with with Corporate Avg Fue Economy standard			$5 x # of tenths of mpg exceeds	
					Failure to comply with agency information gathering orders		$10,000		
DOT	NHTSA	Motor Vehicle Info and Cost Savings Act	15 USC 1917		Violations of the bumper standard		$1,000	each violation up to $800,000	1986
			15 USC 1946		Failure of motor vehicle insurance companies to provide info		$1,000	each violation up to $400,000	
			15 USC 1990b		Odometer violations		$2,000	each violation up to $100,000	
			15 USC 2024a		Violations of theft prevention requirements		$1,000	each violation up to $250,000	
AID		Program Fraud Civil Remedies Act	31 USC 3801-3812		False claims or written statements		$5,000	plus double the amount of the false claim paid	--
ED	OPE	Higher Education Act of 1965, as amended	20 USC 1082,1094		Violation of Title IV, misrepresentation		$25,000		--
HHS	OIG	Social Security Act, Section 1128A(a)(1)	42 USC 1320a-7a(a)(1)	1981	An item or service not provided as claimed		$2,000	plus assessments	--
					An item or service not provided as claimed		$2,000	plus assessments	--
					Physician's service provided by non-physician		$2,000	plus assessments	--
					Request for payment in violation of Medicare assignment agreement		$2,000	per line item	--
					Request for payment violates agreement w/ State Medicaid agency		$2,000	per line item	--
					Request for payment violates agreement w/ participating physician		$2,000	per line item	--
					Req. for payment violates agreement not to charge patients under PPS		$2,000	per line item	--
					Gives false or misleading info re: PPS to influence discharge decision		$15,000	per violation	--
					Where hosps and HMOs hav. physician incentives to reduce/limit svcs		$2,000		--
HHS	OIG	Social Security Act, Section 1833(h)	42 USC 1395l(h)	1987	Violation of assignment requirement for certain diagnostic lab tests		$2,000	plus assessments	--
HHS	OIG	Social Security Act, Section 1833(i)	42 USC 1395l(i)	1987	Violation of assignment for nurse-anesthetist services		$2,000		--
HHS	OIG	Social Security Act, Section 1834(a)	42 USC 1395m(a)	1987	Supplier won't supply rented DME eqp. free after rental pay exhaust		$2,000	plus assessments	--
HHS	OIG	Social Security Act, Section 1834(b)	42 USC 1395m(b)	1987	Nonparticip physician or supplier violates charge limit for radiology		$2,000	plus assessments	--
HHS	OIG	Social Security Act, Section 1842(b)	42 USC 1395u(b)	1986	Violation of assignment requirement for physician assistant services		$2,000		--
HHS	OIG	Social Security Act, Section 1842(j)	42 USC 1395u(j)	1986	Medicare nonparticipating physician's violation of fee freeze		$2,000	plus assessments	--
					Nonparticipating physician's violation of charge limitations		$2,000		--
HHS	OIG	Social Security Act, Section 1842(j)	42 USC 1395u(j)	1987	Nonparticip physician's viol. of charge limitations for spec. services		$2,000	plus assessments	--
HHS	OIG	Social Security Act, Section 1842(k)	42 USC 1395u(k)	1986	Physician bills for ass'ts at cataract surgery without prior approval		$2,000		--
HHS	OIG	Social Security Act, Section 1842(l)	42 USC 1395u(l)	1986	Nonparticip physician violates refund requirements for unnecess svcs		$2,000		--
HHS	OIG	Social Security Act, Section 1842(m)	42 USC 1395u(m)	1986	Nonparticip physician violates refund require. for unassigned claims		$2,000		--
HHS	OIG	Social Security Act, Section 1842(n)	42 USC 1395u(n)	1987	Violation of assign. provision for purchased diagnostic procedures		$2,000	plus assessments	--
HHS	OIG	Social Security Act, section 1866(g)	42 USC 1395cc(g)	1986	Hospital unbundling of outpatient surgery costs		$2,000		--
HHS	OIG	Social Security Act, Section 1867	42 USC 1395dd	1986	Hospital and responsible physician dumping of patients		$50,000		1987
HHS	OIG	Social Security Act, Section 1876	42 USC 1395mm		HMOs or competitive medical plans fail to provide necessary care		$25,000	or maximum of $10,000 for Medicaid	1987
					Impose premiums in excess of permitted amounts		$25,000		1987
					Expel or refuse to re-enroll in violation of proscribed procedures		$25,000		1987
					Practices to discourage enroll. of those likely to incur hi expenses		$100,000		--
					Misrepresent or falsify information to the Secretary/other individual		$100,000	or $25,000 depending on violation	--
					Fail to assure prompt payment for services and supplies		$25,000		1987
HHS	OIG	Social Security Act, Section 1891	42 USC 1395bbb	1987	Individual notifies home health agency of scheduled survey		$2,000		--
HHS	OIG	Social Security Act, Section 1819/1919	42 USC 1395i-3; 1396r	1987	Individual notifies a skilled nursing facility of a scheduled survey		$2,000		--
					Individual certifies or causes to be certified false statement		$5,000	$1,000 maximum where individual certifies	--

DEPARTMENT	COMPONENT	AUTHORITY	CITATION	ENACTMENT DATE	SANCTION	MINIMUM	NOT TO EXCEED	OTHER VALUATION METHOD	LAST ADJUSTMENT
					Skilled nursing facility or nursing facility out of compliance		$10,000	per day	--
					Skilled nursing facility w/ prior period of noncompliance		$10,000	per day	--
HHS	OIG	Social Security Act, Section 1819/1919	42 USC 11131(c)	1986	Failure to report malpractice liability or settlement of payments		$10,000		--
HHS	OIG	Social Security Act, Section 1819/1919	42 USC 11137(b)(2)	1986	Breach of confidentiality of malpractice or professional sanction info		$10,000		--
HHS	OIG	Program Fraud Civil Remedies Act	31 USC 3801-3812	1986	False claims or written statements		$5,000	plus double amount of false claim paid	--
HHS	PHS	Public Health Services Act	42 USC 262(d)		Violation of order to recall licensed immunological products		$100,000	per day	1987
HHS	HCFA	Public Health Services Act	42 USC 300e-9	1976	Employer fails to offer HMO plans in health benefits package		$10,000	plus $10,000 every 30-days in noncompliance	--
HUD	[illegible]	National Manufacturing Housing Construction and Safety Standards Act	42 USC 5410	1974	Manufacture of homes not in compliance, other violations of the Act		$1,000	per violation, not to exceed $1 million in a year	--
HUD	OIG	Program Fraud Civil Remedies Act	31 USC 3801-3812	1986	False claims and written statements		$5,000	plus double amount of false claim paid	--
HUD	[illegible]	Housing and Community Development Act	Not Codified	1987	Judgement in favor of the U.S under section 421			value of the assets/income of housing project	--
INT	MMS	Outer Continental Shelf Lands Act	43 USC 1334		Failure to comply with the Act or lease/permit/regulations		$10,000	per day	--
INT	FWS	Lacy Act	18 USC 42-44		Illegal sale, purchase of fish and wildlife		$10,000 $250	if the value is under $350 of fish or wildlife for transport of fish	--
INT	FWS	Bald Eagle Protection Act	16 USC 668		Civil penalties of sale/possession of bald eagle		$5,000		--
INT	FWS	Endangered Species Act	16 USC 1538		Civil penalties concern import/export of endangered species		$10,000		1978
INT	FWS	Marine Mammals Protection Act	16 USC 1375		Civil penalties assessed for violating permit conditions		$10,000		--
INT	MMS	Federal Oil and Gas Royalty Mgt.	30 USC 1719	1982	Penalty imposed after a person refuses to comply w/ requirements	$500	$10,000		--
INT	BLM	Federal Oil and Gas Royalty Mgt. Act	30 USC 1719	1982	Penalties imposed if lessee fails to comply	$500	$25,000		--
INT	OSM	Surface Mining Control and Reclamation Act	30 USC 1268	1977	Civil penalties for cessation orders, notices of violation	$20	$5,000		--
USDA	OIG	Program Fraud Civil Remedies Act	31 USC 3801 - 3812	1986	False claims and written statement	---	$5,000	plus double amount false claim paid	--
DOL	MSHA	Federal Mine Safety and Health Act	30 USC 820	1977	Penalities are assessed for violation of the Act		$10,000	per violation	--
DOL	ESA	Fair Labor Standards Act	29 USC 216		Violation of Child Labor Provisions		$1,000	per violation	--
DOL	ESA	Migrant/Seasonal Agri. Worker Prot. Act	29 USC 1853		Any violation of MSPA		$1,000	per violation	--
DOL	ESA	Immigration Reform and Control Act	8 USC 1188	1986	Violation of H-2A work contract obligations of IRCA		$1,000	per violation	--
DOL	ESA	Contract/Work Hours/Safety Standards Act	40 USC 328		Violation of CWHSSA		$10	per day of liquidated damages	--
DOL	ESA	Walsh-Healey Public Contracts Act	41 USC 36		Violation of the statues child labor provisions		$10	per day of liquidated damages	--
GSA	OIG	Program Fraud Civil Remedies Act	31 USC 3801-3812	1986	Penalties are imposed for false claims		$5,000	for each claim and 2 x amt for ea claim	--
TRES	OFAC	Internat'l Emerg. Econ. Powers Act	50 USC 1705(a)	1988	Violations of economic embargo involving Iran, Nicaragua and Libya		$10,000		---
TRES	OFAC	Comprehensive Anti-Apartheid Act	22 USC 5113(b)(1)	1988	Violations of economic embargo involving South Africa		$50,000		---
TRES	OFE	Currency and Foreign Transactions Act	31 USC 5311-5321		Failure to file financial transaction documents	$25,000	$100,000	for each unreported transaction	1986
TRES	CUSTOMS	Tariff Act of 1930, as amended	19 USC 1436	1930	Failure to report arrival timely or present conveyance for inspection	$5,000	$10,000	$5,000 first violation, $10,000 for subsequent	1986
TRES	CUSTOMS	Tariff Act of 1930, as amended	19 USC 1584	1930	Failure to manifest merchandise found on vessel/vehicle		$10,000 $500 $1,000 $500 $200	or value of unmanifested items, whichever less against one responsible for manifest discrepancy per ounce of unmanifested controlled substances per ounce smoked/prepared opium or marijuana per ounce unmanifested crude opium	--- --- 1986 1986 1986
TRES	CUSTOMS	Tariff Act of 1930, as amended	19 USC 1627, 1627a	1930	Knowing import/export of stolen vehicle/parts; altered/tampered ID		$10,000		---
					Exporting used vehicle without presenting it and ID documents		$500		---
TRES	CUSTOMS	Tariff Act of 1930, as amended	19 USC 1641	1984	Conducting Customs business without a license		$10,000		1984
				1984	False statement, felony/misdemeanor conviction, aids violations, etc.		$30,000		1984
TRES	CUSTOMS	Act of 1793	46 USC App. 91	1799	Failure to deliver true cargo manifest, obtain clearance, etc.	$500	$1,000		1935
					Same as above, involving narcotic drugs, spirits, or liquor	$1,000	$5,000		1935
					Delinquency in completing manifest (vessel bound for foreign port)	$50	$100	$50/day after 4th sailing day, $100 after 3 days	1935
TRES	CUSTOMS	Coastwise Trade Passenger Statute	46 USC App. 289		Landing of passengers from non-coastwise-qualified vessel		$200	per passenger	1898
TRES	CUSTOMS	Act of 1793	46 USC App. 309	1793	Failure to report arrival of merchandise transported inland		$50	for each 24 hours delinquency in reporting	---
TRES	CUSTOMS	Act of 1793	46 USC 312	1793	Failure to report arrival at port other than one bound for		$20		---
TRES	CUSTOMS	Act of 1793	46 USC App. 315	1793	Failure to deliver cargo manifest after travel between US ports		$100		---
TRES	CUSTOMS	Acts of 1866 and 1867	46 USC App. 316(a)	1867	Unauthorized vessel towing vessel not in distress between US points	$250	$1,000	$50/ton towed also assessed	1980
TRES	CUSTOMS	Act of 1886	46 USC App. 319	1886	Undocumented vessel engages in trade where documentation required		$500		1980
TRES	CUSTOMS	Merchant Marine Act, 1920, as added 1938	46 USC App. 883-1	1938	Transportation of passengers between points in U.S. by certain vessels		$200	per passenger so transported	---
TRES	CUSTOMS	Act of 1936	46 USC App. 883(a)	1936	Failure to report rebuilding of vessel (over 500 tons) outside US		$200	plus forfeiture of vessel, tackle, equipment, etc.	None
TRES	CUSTOMS	Section 3068 Revised Statutes as amended	19 USC 70	---	Obstructing/hindering officer in effecting revenue or navigation laws	$500	$2,000		1935

DEPARTMENT	COMPONENT	AUTHORITY	CITATION	ENACTMENT DATE	SANCTION	MINIMUM	NOT TO EXCEED	OTHER VALUATION METHOD	LAST ADJUSTMENT
TREAS	CUSTOMS	Section 3125 Revised Statutes	19 USC 292	---	Unfiled manifest, etc., Great Lakes licensed vessel, no customhouse		$20	per failure to file/report	---
TREAS	CUSTOMS	Anti-Drug Abuse Act of 1986	19 USC 1436(b) and (d)	1986	Failure to report arrival and enter conveyance	$5,000	$10,000	$5000 for first violation; $10,000 for subsequent	1986
TREAS	CUSTOMS	Tariff Act of 1930	19 USC 1438	1930	Foreign consul returns documents before vessel clearance foreign port		$5,000		---
TREAS	CUSTOMS	Tariff Act of 1930	19 USC 1440	1930	Failure to file post entry for merchandise or baggage on vessel		$500		---
TREAS	CUSTOMS	Tariff Act of 1930	19 USC 1445	1930	Failure to obtain permit to go from one US port to another w/imports		$500		---
TREAS	CUSTOMS	Tariff Act of 1930	19 USC 1454	1930	Landing of passengers from vessel in foreign trade w/o permit		$1,000	for first and $500 for each additional passenger	1986
TREAS	CUSTOMS	Tariff Act-1930/Anti-Drug Abuse Act-1986	19 USC 1584	1930	Failure to produce manifest to Customs officer		$1,000		
					Vessel with merchandise on board not described in manifest		$10,000	Lesser of $10,000 or value of merchandise	1986
					Unmanifested merchandise consists of narcotics	$200	$1,000	Crude opium $200/oz;Smoked opium $500/oz;$1000else	1986
TREAS	CUSTOMS	Anti-Drug Abuse Act of 1986	19 USC 1585	1986	Failure to report arrival and make entry (arrival from foreign port)	$5,000	$10,000	$5,000 first violation; $10,000 thereafter	1986
TREAS	CUSTOMS	Anti-Drug Abuse Act of 1986	19 USC 1586	1986	Merchandise unladen before proper discharge place and without permit		$10,000	Lesser of $10,000 or value of merchandise	1986
HHS	OIG	Program Fraud Civil Remedies Act of 1986	31 USC 3801-3812	1986	False claims or written statements		$5,000	plus double amount false claim paid	1986

ATTACHMENT E

CMP ACCOUNTING AND REPORTING RESPONSES

AGENCY	COMPONENT	CMP REPORTED IN AGENCY ACCOUNTS RECEIVABLE	CMP REPORTED IN OIG SEMIANNUAL
AID	OIG	YES	YES
USDA	AMS	NO	NO
USDA	APHIS	YES	UNK
USDA	ASCS	MIXED	NO
USDA	FGIS	YES	NO
USDA	FNS	YES	NO
USDA	FS	NO	NO
USDA	PSA	NO	UNK
ED	OPE	YES	YES
EPA	OAR	YES	NO
EPA	OPTS	YES	NO
EPA	OSWER	YES	NO
EPA	OW	YES	NO
GSA	OIG	PENDING	NO
HHS	HCFA	PENDING	NO
HHS	OIG	NO	YES
HHS	PHS	PENDING	NO
HUD	OMHRF	YES	NO
HUD	OIG	NO	YES
INT	BLM	NO	YES
INT	FWS	NO	YES
INT	MMS	MIXED	MIXED
INT	SMR	NO	YES
DOL	ESA	MIXED	UNK
DOL	MSHA	YES	UNK
NASA	OIG	PENDING	YES
RRB	OIG	PENDING	PENDING
SBA	OGC	NO	NO
STATE	OIG	PENDING	PENDING
DOT	AEP	YES	NO
DOT	FAA	YES	NO
DOT	FHA	NO	NO
DOT	FRA	YES	NO
DOT	MARAD	NO	NO
DOT	NHTSA	NO	NO
DOT	RSPA	YES	NO
DOT	SLSDC	YES	NO
DOT	USCG	NO	NO
TRES	CUSTOMS	YES*	NO
TRES	OFAC	NO	NO
TRES	OFE	NO	NO
USIA	OIG	PENDING	PENDING
VA	OIG	PENDING	PENDING

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*Since Treasury does not have an agency-wide accounts receivable, this refers to the bureau-wide accounts receivable.

ATTACHMENT F

NUMBERS OF CMPs IMPOSED

AGENCY	COMPONENT	CMPs LAST YEAR	CMPs LAST 5 YRS
DOL	ESA	1379	5360
DOL	MSHA	133073	629350
DOT	AEP	23	86
DOT	FAA	1599	7241
DOT	FHA	568	3821
DOT	FRA	4350	27023
DOT	RSPA	20	39
DOT	SLSDC	6	50
ED	OPE	41	119
EPA	OAR	1	13
EPA	OPTS	757	2615
EPA	OSWER	137	694
EPA	OW	3	3
HHS	OIG	98	356
HUD	OMHRF	3	3
INT	BLM	445	2055
INT	FWS	8616	21245
INT	MMS	3	15
INT	SMR	1159	7293
SBA	OGC	12	60
TRES	CUSTOMS	178	15
TRES	OFE	12	29
USDA	AMS	78	421
USDA	APHIS	17235	96190
USDA	ASCS	2329	4881
USDA	FNS	182	651
USDA	FS	73	510
USDA	PSA	90	345
	TOTAL	172470	810483

PUBLIC CITIZEN

Buyers Up ☐ Congress Watch ☐ Critical Mass ☐ Health Research Group ☐ Litigation Group ☐ Tax Group

April 4, 1988

Sen. Carl Levin
Chairman
Subcommittee on Oversight of Government Management
Committee on Governmental Affairs
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested during my testimony of February 29, 1988, in support of S. 1014, I am enclosing additional material for the use of the subcommittee.

First, in response to your question, my colleagues and I cannot recall a recent instance when the Congress during a statutory reauthorization explicitly refused to increase a civil penalty.

Second, Senator Lautenberg asked that I submit for the record documentation for my discussion of civil penalties for nuclear power plant operators. Attached is a portion of the 1987 Reactor Safety Survey conducted by Public Citizen's Critical Mass Energy Project. This section of the study deals with the penalties levied by the Nuclear Regulatory Commission. As I stated in my testimony, the cost of replacement power when a nuclear plant has been shut down may exceed the cost of civil penalties assessed by the Commission. These assessments are so low for a combination of reasons (primarily, the relevant statutes do not allow for adequate penalties, and and then the NRC fails to adequately enforce them) -- but their value is diminished further still by inflation.

Finally, I referred to a management book that discussed the prevalence of law violation as a corporate response to government regulation. The book's full and correct title is Corporate Strategy, the Fortune 500 and Public Policy by Mike H. Ryan, Carl L. Swanson and Rogene A. Buchholz (Basil Blackwell, 1987). The book discusses corporate "strategies" including communication with stockholders through annual reports, formation of political action committees (PACs), and noncompliance with the law. (See pages 160-196, especially chapter 9, "Strategic Use of the Non-Compliance Option by the Fortune 500). While questioning the morality of such noncompliance, the authors go so far as to compare it to civil disobedience (e.g., some churches violate immigration laws). In its totality, this book presents a very troubling picture of the nature of private sector decisionmaking in the face of inadequate monetary penalties.

In addition, the subcommittee might wish to consult a growing criminological literature, particularly the classic study Corporate Crime by Marshall Clinard and Gilbert Yeager (Free Press, 1980) and the useful recent anthology Corrigible Corporations, Unruly Law (Peter French and John Braithwaite, eds., U. of Texas Press, 1985). This expanding body of empirical evidence indicates that private sector noncompliance with health and safety statutes is endemic and poses a serious threat to the public. They also suggest a menu of possible alternative civil and criminal sanctions that could complement strengthened civil penalties.

Again, thank you for the opportunity to testify in support of this legislation. As Public Citizen, Consumer Federation of America and the United States Public Interest Research Group (U.S. PIRG) stated in our testimony, we regard S. 1014 as a useful and constructive step toward full enforcement of our regulatory laws.

Sincerely,

Michael Waldman

Michael Waldman
Legislative Director
Public Citizen's Congress Watch

EXCERPT FROM 1986 NUCLEAR POWER SAFETY REPORT

CRITICAL MASS ENERGY PROJECT

PUBLIC CITIZEN

From 1986 Nuclear Power Safety Report

Fines: Inadequate NRC Enforcement of Safety Regulations

To enforce its many rules and regulations governing reactor design, construction, and operation, the Nuclear Regulatory Commission (NRC) has a number of enforcement tools at its disposal. First, it can simply warn a nuclear utility to correct a violation of NRC rules. In more serious cases, the NRC can fine the offending utility. Finally, if the violation is severe or is recurrent, the NRC can also put restrictions on, or even take away, a plant's operating license.

VIOLATIONS DIFFER IN SEVERITY

Enforcement of NRC regulations is a multi-step process of inspection, investigation, assessment, and negotiation administered by the agency's Office of Enforcement.

The NRC inspects nuclear power plants on a regular basis [1] and often finds violations during these inspections. For instance, a licensee may violate the plant's technical guidelines for equipment or operations. A utility might also violate the NRC's safeguards, radiation exposure, environmental or other safety regulations. [2]

If significant violations are found or reported, the NRC investigates them and determines their significance and severity.

The NRC assigns a severity level to each violation. There are five levels of severity, with level "I" the most significant and level "V" the least. [3]

The severity levels are defined as follows:

Severity level I and II violations are of "very significant regulatory concern." [4] They involve actual or high potential impact on the public.

Severity level III violations are "cause for significant concern."

Severity level IV violations are "less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern."

Severity level V violations are of "minor safety or environmental concern."

A VARIETY OF ENFORCEMENT ACTIONS

The NRC can take one of three enforcement actions. It can issue a "notice of violation," impose civil penalties (i.e. fines), or issue orders of various types (e.g. the NRC can order a plant to shut down).

Before the NRC actually proposes any action, it meets with the utility's executives in an enforcement conference to:

"1. discuss the violations, their significance and causes, and the licensee's corrective actions,

2. determine whether there are any aggravating or mitigating circumstances, and

3. obtain other information which will help determine the appropriate enforcement action." [5]

At these conferences, the utility is given an opportunity to explain what it has done and will do to correct the condition.

Notices of violations (NOVs) are nothing more than statements that there has been a violation, what it was, and what was (or will be) done to correct it. [6] NOVs are generally written for severity level V and IV violations.

Fines are imposed for the most serious -- i.e. severity level I and II -- violations absent any "mitigating circumstances" such as forthrightness in reporting by the utility or timely correction of the problem. Fines are considered for severity level III violations, and may be imposed for severity level IV violations if the utility is a repeat offender. [7]

NRC regulations limit civil penalties to $100,000 per violation per day. Table VIII-1 below is the schedule of maximum fines for nuclear power plants.

Table VIII-1. SCHEDULE OF NRC FINES

Severity Level	Maximum Daily Fine
I	$100,000
II	80,000
III	50,000
IV	15,000
V	5,000

A utility is supposed to pay a proposed fine within 30 days. However, the utility may appeal the fine if it believes further mitigating factors ought to be considered.

The NRC may then adjust the fines based on one or more considerations. These include whether the utility undertook "prompt identification and reporting . . . [or] corrective action to prevent recurrence" of the violation. The NRC may also consider such other factors as "past performance . . . prior notice of similar event(s) [or] multiple occurrences" of the violation.

Beyond fines, the NRC may issue orders to modify, suspend, or revoke a license in order to force a utility to take action (or stop action) that it considers essential. Orders may be issued in lieu of or in addition to fines. [9]

For example, after workers at the Peach Bottom plant (Peach Bottom, PA) were caught sleeping at their posts in February 1987, the NRC issued an order to shut the plant down for an investigation into Philadelphia Electric's (the plant's owner) management. [10]

THE NUMBER OF FINES IS INCREASING

In 1986, the NRC levied 52 fines against nuclear utilities, totaling $3,955,000. This is a 40 percent increase from the 37 fines totaling $3,631,925 which the NRC levied in 1985 and a 73 percent increase from the 30 fines totaling $1,899,000 it levied in 1984. [11] See Table VIII-2 below.

Table VIII-2. FINES IMPOSED BY THE NRC 1984-1986

Year	Number of Fines Levied	Total Amount of Fines	Average Fine Amount
1984	30	$1,899,000	$63,300
1985	37	$3,631,925	$98,160
1986	50	$4,105,000	$82,100

The increase in the number of fines the NRC levied in 1986 is probably indicative of more violations in the nuclear industry and not increased diligence by the agency in rooting out violations. This seems to be confirmed, in part, by the decrease between 1985 and 1986 in the average size of the fines.

Unfortunately, there are cases in which serious accidents do not prompt a fine. For example, in December 1986 a hot-water pipe burst killing four workers at the Surry nuclear power plant in Gravel Neck, Virginia. (See p. III-6 for a fuller description of the accident.) While the NRC blamed the accident on faulty maintenance and listed it among the eleven most serious accidents of the year (see p. III-3), it did not levy a fine. [12] The state of Virginia, citing the fact that the dead were contract employees and not employees of Virginia Power, also imposed no punitive action. [13]

NRC's FINES ARE NOT PUNITIVE

While the large and growing number of fines levied on nuclear utilities is indicative of their poor performance, the NRC remains a lenient enforcer. Further, the NRC's civil penalty process is laced with loopholes that undermine its effectiveness.

Even before a fine is proposed, the utility is able to influence the outcome of the civil enforcement process through its participation in an enforcement conference. Even then, after it is fined, the utility still has a chance to appeal. The appeal gives the utility yet another chance to negotiate or influence its punishment for a violation. Many appeals produce either a reduction or a mitigation of the fine. [14]

When adjusting its fines the NRC looks back only two years for similar violations. This allows a utility to escape accountability for a long record of violations. [15] In 1986, the NRC refused to give a list of violations to Public Citizen, claiming that it doesn't keep such records. If that is true, then it is doubtful the NRC looks even a year or two back for a past record of violations. [16]

The civil penalty process rarely proceeds quickly. Two years or more will often pass between the time a violation occurs and the time when a fine is paid. However, utilities do not pay penalties for late payment nor interest on the amount owed during the delay. Even if the NRC confirms its original judgment after the appeals process, actual payment may be years later.

Further, the amount a utility is required to pay is unlikely to improve a utility's performance record. The maximum fines which the NRC may levy are rarely imposed. The total dollar amount of the fines levied against a utility -- often for multiple violations in several severity categories -- are usually below $50,000. For example, of the 52 fines levied in 1986, only 17 (i.e. 32 percent) were above $50,000.

Even if the maximum fine is imposed, it amounts to a miniscule fraction of a nuclear plant's operating budget, the utility's total worth, or the cost of replacement power if a plant is shut down. Thus, it is only a minimal incentive for the utility to improve its safety record.

For example, replacement power for the downed Surry nuclear power plant, at which four workers died in December 1986, (see page III-6) cost Virginia Power $500,000 per day while the plant was closed. [17] Thus, it is economically more attractive for a utility to absorb a fine and continue to operate a defective plant than to close a plant and invest in the necessary repairs.

Similarly, the Rancho Seco plant near Sacramento, CA was fined $375,000 -- 1986's largest fine -- for a December 1985 accident. [18] In comparison, the operating and maintenance budget for the plant in 1985 was $93.5 million.

Given the low fines and long delays, it is doubtful that fines have much impact on a plant's safety or on how a utility operates a plant. Even the NRC acknowledges this. According to one NRC official, fines are "not meant to be punitive." [19]

ENDNOTES

[1] 1985 Annual Report, Nuclear Regulatory Commission, NUREG-1145, Vol. 2, p. 105.

[2] 10 C.F.R. Ch. 1, Part 2, App. C, III.

[3] Ibid.

[4] Ibid. Also see 10 C.F.R. Ch. 1, Part 2, App. C, Supplement I - VIII for a complete discussion of types of violations that might fall into each category.

[5] See N. 2, supra, at Ch. 1, Part 2, App. C, IV.

[6] Id. at Ch. 1, Part 2, App. C, V. A.

[7] Id. at Ch. 1, Part 2, App. C, V. B.

[8] Ibid.

[9] Id. at Ch. 1, Part 2, App. C, V. C.

[10] Joshua Gordon, Sleeping on the Job, (April 1987), Public Citizen, $1.00

[11] Joshua Gordon, 1984-1985 Nuclear Power Safety Report, (August 1986), Public Citizen, $7.50.

[12] George Stukenbroeker, "Surry Pipe Valve Work Is Blamed," Richmond [VA] Times-Dispatch, Jan. 13, 1987, p. B3.

[13] "State Won't Cite Virginia Power," Richmond [VA] Times-Dispatch, Feb. 5, 1987, p. B5.

[14] See Table D -- Fines; five of the 52 fines the NRC levied in 1986 were subsequently reduced by the agency.

[15] See N. 2, supra, at Ch. 1, Part 2, App. C, V. D, Table 2.

[16] See Freedom of Information Act (FOIA) request from Public Citizen to the NRC, number 86-292 and related correspondence on file at the Nuclear Regulatory Commission's Public Document Room.

[17] Electric Utility Week, Jan. 17, 1987, p. 11.

[18] See Table D -- Fines; EN #86-53.

[19] Private communication with Perry Robinson, Enforcement Specialist, Office of Inspection and Enforcement, Nuclear Regulatory Commission, May 2, 1986.

Appendix C. Descriptions of Plant Mishaps for which NRC Levied Fines

American Electric Power Service Co.

Cook 1, 2	Bridgman, MI
$100,000	EN 86-16

Failure of plant personnel to correctly align valves in a containment test on unit 1; an inoperable unit 2 control room ventilation system; failure to conduct required tests on unit 2; inadequate equipment calibration during tests on both units. The base fine was doubled because of multiple examples of similar violations and prior poor performance in related areas.

Cook 2	Bridgman, MI
$25,000	EN 86-85

Failure of personnel to follow procedures during electrical wiring of safety equipment.

Arizona Nuclear Power Project

Palo Verde 1, 2	Wintersburg, AZ
$100,000	EN 86-28

Multiple security violations including access control and degraded vital area barriers as well as a failure to report these violations. Penalties were escalated because of the multiple examples of violations and prior notice of similar problems.

Arkansas Power & Light Co.

Arkansas 1	Russellville, AR
$50,000	EN 86-83

Modification of safety equipment without proper design review and evaluation. The modification resulted in the deletion of check valves that were to prevent problems during accidents.

Commonwealth Edison Co.

Byron 1	Byron, IL

$50,000   EN 86-10

Failure to control access to a vital area. A breach in the barrier existed which would have allowed unauthorized, undetected access.

Byron 1   Byron, IL
$100,000   EN 86-29

Incorrect valve position which made safety systems unable to work properly; incomplete testing on safety protection systems; failure to follow procudures after potentially explosive gases were found in waste tanks; and inadequate inspection of control room ventilation system.

Byron 1   Byron, IL
$25,000   EN 86-84

A defective safety valve was installed because of improper identification and documentation. In addition, the valve was tested using deficient procedures.

Byron 1, 2   Byron, IL
$25,000   EN 86-41

An employee who reported inadequate inspection procedures and the installation of non-radiation-proof equipment was fired. The fine was levied after the Department of Labor ruled in favor of the employee. The base penalty was reduced by half for prior good performance in this area.

LaSalle 2   Seneca, IL
$50,000   EN 86-13

Failure to properly evaluate the operability of the emergency core cooling system (ECCS). It was inoperable for more than 13 hours with out any action taken to correct it.

Zion 1   Zion, IL
$0   EN 86-18

A safety pump was inoperable for 22 days, in violation of technical specifications. The fine was dropped after the utility argued that the pump's operability was not that important.

Connecticut Yankee Atomic Power Co.

Connecticut Yankee   Haddam Neck, CT
$50,000   EN 86-88

Several violations of significant concern because they involved performance deficiencies and inattention to detail at several levels within the organization. For example, an individual received a radiation overexposure without having read or initialed the radiation work permit as required. Health technicians failed to provide adequate control and surveillance of the work. Further, management apparently did not verify the qualifications of the health technicians to asssure that they understood their duties, nor did management provide sufficient surveillance of technicians to verify proper performance or to identify and correct deficiencies.

Consumers Power Co.

Palisades
$50,000
South Haven, MI
EN 86-46

Inadequate corrective actions regarding excessive valve leakage.

Detroit Edison Co.

Fermi 2
$50,000
Newport, MI
EN 86-31

Multiple security violations, one of which involved the falsification of required records by a security guard.

Fermi 2
$300,000
Newport, MI
EN 86-54

Several violations that represent a serious breakdown of management controls and discipline in the control room during a reactor startup in 1985. The violations involved the error by a reactor operator in pulling eleven control rods out of sequence, the lack of oversight of control room activities, and the failure to evaluate the significance of the error and take appropriate corrective actions before resuming startup.

Fermi 2
$75,000
Newport, MI
EN 86-58

Failure to keep a valve open as required by the operating license; two instances of violation of containment integrity; and removal from service of a room cooler serving emergency core cooling systems.

Duke Power Co.

Catawba 1, 2
$50,000
Clover, SC
EN 86-82

During a loss-of-control-room test, conditions were established which caused safety valves to be in the wrong position. Violations involved failure to change plant procedures when components were modified, inadequate human factor considerations for changes to control panels which resulted in inadequate labeling and marking of components, and deficient procedures which caused incorrect valve settings.

McGuire 1	Cornelius, NC
$50,000	EN 86-35

Failure to meet technical specifications so that specific conditions were exceeded and appropriate measures were not taken.

Oconee 1, 2, 3	Seneca, SC
$25,000	EN 86-08

Multiple examples of degraded vital area barriers.

Florida Power Co.

Crystal River 3	Red Level, FL
$50,000	EN 86-21

Security violations including degradation in a vital area barrier and failure to take effective compensatory measures. The penalty was escalated for prior poor performance in this area. However, the fine was reduced by half after the utility argued that some of the violations were not as serious as first thought. In addition, reward was given for prompt identification and reporting of the breached vital area barrier.

Crystal River 3	Red Level, FL
$80,000	EN 86-80

Deficiencies in the management, administration, requalification, and documentation of the licensed operator training program.

Florida Power & Light Co

St. Lucie 1, 2	Hutchinson Island,
FL	
$25,000	EN 86-59

Failure to provide an adequate barrier to protect vital equipment; inadequate security inspections.

Turkey Point 3	Florida City, FL
$50,000	EN 86-44

Failure to ensure operability of neutron detectors before officially notifying the NRC that the installation of the detectors was complete and that the system was operational. In actuality, the system was not yet operational because testing had not been completed, no operator training had been performed, and operating procedures were not in place.

Turkey Point 3, 4	Florida City, FL
$25,000	EN 86-25

Unauthorized entry of a plant worker into a locked high radiation area. The person was entering an area to perform maintenance. During the entry, numerous procedural violations occurred including failure to notify radiation health personnel prior to operation of certain machinery; performing work outside the scope of the plant work order; failure to have two persons present during the entry; and failure to keep the worker's exposure within the limits established by the radiation work permit for the job. Although the exposure received by the individual was within NRC limits, a substantial potential for an overexposure existed. The fine was later reduced by half based on the licensee's extensive corrective actions.

Turkey Point 3, 4	Florida City, FL
$300,000	EN 86-63

Failure to satisfy technical specifications; failure to ensure that safety activities were performed in accordance with adequate procedures. Weaknesses in the licensee's design control and corrective action programs were also identified. In addition to the fine, an Order was issued to confirm commitments for a comprehensive reassessment and examination of other plant safety systems to determine whether additional similar problems exist.

General Public Utilities

Three Mile Island 2	Londonderry Twp., PA
$40,000	EN 86-73

Modification made to the Reactor Building Polar Crane without proper engineering review and documentation. The modification involved the addition of a hand release mechanism which directly affected the ability of the main hoist brakes to properly function. This was a more serious example of procedural and management control weaknesses included in a 1984 Notice of Violation involving refurbishment work associated with the Crane.

Georgia Power Co.

Hatch 1, 2	Baxley, GA
50,000	EN 86-33

Multiple security violations involving inadequate compensation for computer failures at the protected and vital area barriers.

Gulf States Utilities

River Bend	St. Francisville, LA
$65,000	EN 86-62

Four violations for failure to control access to vital areas. Two additional violations involving failure to provide physical barriers to vital areas. The fine was partially mitigated because of the licensee's prompt and extensive corrective actions.

Illinois Power Co.

Clinton 1	Clinton, IL
Pending	EN 86-93

Fine is based on a discrimination case where an employee was fired from his job after reporting an office break-in and missing safety-related documentation. The fine ($50,000) was suspended pending action by the Department of Labor in the case.

Kansas Gas & Electric Co.

Wolf Creek	Burlington, KS
$40,000	EN 86-50

The fine is based on a violation which involved the potential for unauthorized, undetected access to the vital area. The base penalty was reduced by half because prior good performance and prompt and extensive corrective action.

Louisiana Power & Light

Waterford 3	Taft, LA
$50,000	EN 86-22

Failure to adequately control conditions that would change the proper operation of safety systems; failure to follow appropriate procedures.

Nebraska Public Power District

Cooper	Brownsville, NB
$50,000	EN 86-06

Failure to properly remove jumper wires after electrical testing was completed. This rendered automatic safety equipment inoperable, and negated the capability of automatically isolating the reactor building ventilation system in the event of high radiation levels. Also, inspections on other safety equipment did not detect that it was inoperable. Its condition was not discovered until after the plant had been started up to a point where the machinery was required to work.

Cooper	Brownsville, NB
$25,000	EN 86-24

Numerous security violations involving degraded vital area barriers and unescorted access by a temporary employee. The fine was later reduced by half.

Omaha Public Power District

Fort Calhoun	Fort Calhoun, IN
$15,000	EN 86-94

Inadequate vital area barrier. A fine was levied because the violation was similar to a previous violation for which there was a failure to take effective corrective actions.

Pacific Gas & Electric Co.

Diablo Canyon 2	Avila Beach, CA
$50,000	EN 86-07

Inoperability of automatic safety equipment caused by a wiring error. The violation existed for several months despite numerous opportunities to identify and correct it.

Philadelphia Electric Co.

Peach Bottom 3	Peach Bottom, PA
$200,000	EN 86-37

The fine is based on the errors by several licensed personnel in the withdrawal of a wrong control rod from the reactor core; the inadequate verification of adherence to proper rod withdrawal procedures; improper bypassing of warning systems that would have alerted workers to the mistakes; and the inadequate verification of the rod position before bypassing the warning system.

Portland General Electric Co.

Trojan	Prescott, OR
$50,000	EN 86-09

Breakdown in quality assurance program which resulted in work requests that did not, but should have, required quality control inspections. Quality assurance audits and management reviews failed to detect this apparent quality assurance program breakdown.

Trojan
$80,000
Prescott, OR
EN 86-30

Failure to maintain control room emergency ventilation system in proper working order over an extended period of time. This system was inoperable because of excessive leakages. In addition, the required independence of the system was compromised because two systems were cross connected.

Trojan
$50,000
Prescott, OR
EN 86-76

Failure to properly maintain reactor heat removal systems; incomplete inspection of a safety valve. The inspector failed to properly witness installation of the valve yet signed the inspection record to indicate that the inspection had taken place.

Public Service Co. of Colorado

Fort St. Vrain
$75,000
Platteville, CO
EN 86-48

Violations for exceeding the 35 percent power limit the NRC imposed in 1985.

Fort St. Vrain
$65,000
Platteville, CO
EN 86-49

Numerous security violations, two of which involved potential pathways for unauthorized, undetected accesss into the protected area and vital areas. The penalties were reduced by half because of prior performance. However, further mitigation was not warranted because of the multiple examples of the violations identified, and because of the duration and significance of the violations.

Sacramento Municipal Utility District

Rancho Seco
$25,000
Clay Station, CA
EN 86-05

Two violations involving bringing a weapon into the protected area, and improper badging of personnel. The fine was reduced by half due to identification, reporting, and corrective action by the licensee.

Rancho Seco
Clay Station, CA

$375,000	EN 86-53

Violations identified as a result of a December 1985 accident.

South Carolina Electric & Gas Co.

Summer	Parr, SC
$50,000	EN 86-19

Failure to comply with plant technical specifications; safety equipment inoperable for more than 72 hours.

Summer	Parr, SC
$50,000	EN 86-70

Two violations of technical specifications. One involves circumstances in which none of three separate pumps would have started automatically, as intended, for over 13 hours. The second violation involves the inoperability of two pumps for about 110 hours because of the position of a switch for one and electrical problems for the second.

Southern California Edison Co.

San Onofre 1	San Clemente, CA
$180,000	EN 86-69

Three violations of NRC requirements associated with a November 1985 accident. The violations involved rendering inoperable the auxiliary feedwater system because five check valves failed to close, the failure of the check valve testing program, and the failure to take adequate corrective actions to analyze, evaluate, and identify the source of noise in the area of one of the valves during plant operations in June 1985.

San Onofre 1, 2, 3	San Clemente, CA
$25,000	EN 86-65

Several security violations. Failure to implement its Safeguards Contingency Plan; failure to report. Fine was reduced by half for prior good performance.

Tennessee Valley Authority

All nine of TVA's plants:	
Browns Ferry 1, 2, 3	Decatur, AL
Sequoyah 1, 2	Daisy, TN
Watts Bar 1, 2	Spring City, TN
Belefonte 1, 2	Scottsboro, AL
$150,000	EN 86-52

Four incidents of discrimination by management against employees at two TVA locations. Three violations for which penalties were levied involved employees who were discriminated against after they supported another person in his action against TVA regarding employee discrimination. The penalty for a fourth violation was mitigated because of TVA's prompt corrective actions which included investigation of the incident, action against the offending supervisor, and an offer of reinstatement with back pay to the affected employee.

Browns Ferry 1, 2, 3	Decatur, AL
$150,000	EN 86-67

Three violations involving: cable tray supports that were not adequately designed to withstand earthquakes; five examples of failures to take adequate corrective actions; four examples of failure to ensure that activities were accomplished in accordance with appropriate drawings and procedures. While the penalties for each violation could have been substantially increased because of the duration of the violations, they were not because most of the deficiencies were identified by the licensee as a result of actions it has taken since the units' shutdown in March 1985.

Texas Utilities Electric Co.

Comanche Peak 1, 2	Glen Rose, TX
$40,000 (Remainder Pending)	EN 86-26

Three violations for intimidation, harassment, and discrimination. Part of the fine ($80,000) was suspended pending action by the Department of Labor in the case.

Comanche Peak 1, 2	Glen Rose, TX
$250,000	EN 86-27

Improper construction practices and inspection programs. There were four violations involving weaknesses in qualtity programs during construction at unit 1. These weaknesses existed over a long period of time. There were two additional violations involving weaknesses in the cable tray reinspection program and the procurement and installation of electrical assemblies.

Union Electric Co.

Callaway	Fulton, MO
$25,000	EN 86-68

One violation was for a safety system that was inoperable for over six hours because personnel improperly closed a valve. The second violation occurred when the plant operated for about eleven hours without the ability of auxiliary feedwater pumps to automatically start.

Virginia Electric & Power Co.

North Anna 1, 2	Mineral, VA
$25,000	EN 86-42

Failure to identify, search, and badge an employee before his entry into the protected area. This violation is similar to another recent violation.

ENDNOTES

The numbers before each plant name correspond to the EN number listed on the table in the Fines Table on page T-13. They can be used to cross reference these descriptions to other details of each fine as listed in the Appendix.

These descriptions are taken directly from NRC documents called "Notification[s] of Significant Enforcement Action," (generally called Enforcement Notification or "EN"), Office of Inspection and Enforcement, Nuclear Regulatory Commission.

The amount of the fines listed is that which the utility ultimately paid, not the amount originally proposd by the NRC (in cases where there was a difference). This information came from an incomplete document entitled "Civil Penalties," pp. 56 - 67, released under the Freedom of Information Act by the NRC's Office of Enforcement, (FOIA-87-407), July 22, 1987.

Some details of several fines were provided by the NRC in private communication with Perry Robinson, Division of Enforcement, August 5, 1987.

The amount of the fines in this list, as well as in the Fines Table are current as of August 5, 1987. Changes may occur in some cases after that date.

Table D. Fines

EN #	UTILITY	PLANT	PROPOSED AMOUNT	IMPOSED AMOUNT	AMOUNT PAID	PROPOSED DATE	IMPOSED DATE	DATE PAID	Days Lag	Notes
EN 86-16	American Electric Power Service Co.	Cook 1, 2	$100,000	-	$100,000	26-Mar-86	-	21-Apr-86	26	
EN 86-85	American Electric Power Service Co.	Cook 2	$25,000	-	$25,000	18-Nov-86	-	18-Dec-86	30	
EN 86-28	Arizona Nuclear Power Project	Palo Verde 1, 2	$100,000	$100,000	$100,000	05-May-86	10-Oct-86	07-Nov-86	186	
EN 86-83	Arkansas Power & Light Co.	Arkansas 1	$50,000	$50,000	$50,000	12-Nov-86	01-Jun-86	25-Jun-87	225	
EN 86-10	Commonwealth Edison Co.	Byron 1	$50,000	-	$50,000	05-Mar-86	-	04-Apr-86	30	
EN 86-29	Commonwealth Edison Co.	Byron 1	$100,000	$50,000	$100,000	06-May-86	26-Feb-87	27-Apr-87	356	(c)
EN 86-84	Commonwealth Edison Co.	Byron 1	$25,000	$25,000	$25,000	18-Nov-86	11-Jun-86	14-Jul-87	238	(d)
EN 86-41	Commonwealth Edison Co.	Byron 1, 2	$25,000	$25,000	$25,000	26-Jun-86	02-Apr-87	27-Apr-87	305	
EN 86-13	Commonwealth Edison Co.	LaSalle 2	$50,000	-	$50,000	19-Mar-86	-	18-Apr-86	30	
EN 86-18	Commonwealth Edison Co.	Zion 1	$25,000	$0	$0	15-Apr-86	-	-		(b)
EN 86-88	Connecticut Yankee Atomic Power Co.	Connecticut Yankee	$50,000	-	$50,000	10-Dec-86	-	02-Jan-87	23	
EN 86-46	Consumers Power Co.	Palisades	$50,000	-	$50,000	01-Jul-86	-	31-Jul-86	30	
EN 86-31	Detroit Edison Co.	Fermi 2	$50,000	-	$50,000	20-May-86	-	19-Jun-86	30	
EN 86-54	Detroit Edison Co.	Fermi 2	$300,000	-	$300,000	03-Jul-86	-	01-Aug-86	29	
EN 86-58	Detroit Edison Co.	Fermi 2	$75,000	-	$75,000	29-Jul-86	-	01-Aug-86	3	
EN 86-82	Duke Power Co.	Catawba 1, 2	$50,000	$50,000	$50,000	12-Nov-86	14-Apr-87	11-May-87	180	
EN 86-35	Duke Power Co.	McGuire 1	$50,000	$50,000	$50,000	02-Jun-86	19-Sep-86	03-Oct-86	123	
EN 86-08	Duke Power Co.	Oconee 1, 2, 3	$25,000	-	$25,000	28-Feb-86	-	20-Mar-86	20	
EN 86-21	Florida Power Co.	Crystal River 3	$100,000	$50,000	$50,000	16-Apr-86	26-Aug-86	25-Sep-86	162	
EN 86-80	Florida Power Co.	Crystal River 3	$80,000	-	$80,000	22-Oct-86	-	21-Nov-86	30	
EN 86-59	Florida Power & Light Co.	St Lucie 1, 2	$25,000	-	$25,000	07-Aug-86	-	09-Sep-86	33	
EN 86-44	Florida Power & Light Co.	Turkey Point 3	$50,000	-	$50,000	25-Jun-86	-	08-Aug-86	44	
EN 86-25	Florida Power & Light Co.	Turkey Point 3, 4	$50,000	$25,000	$25,000	28-Apr-86	14-Oct-86	13-Nov-86	199	
EN 86-63	Florida Power & Light Co.	Turkey Point 3, 4	$300,000	-	$300,000	12-Aug-86	-	01-Oct-86	50	
EN 86-73	General Public Utilities	Three Mile Island 2	$40,000	-	$40,000	29-Sep-86	-	29-Oct-86	30	
EN 86-33	Georgia Power Co.	Hatch 1, 2	$50,000	-	$50,000	28-May-86	-	30-Jun-86	33	
EN 86-62	Gulf States Utilities	River Bend	$65,000	-	$65,000	07-Aug-86	-	05-Sep-86	29	
EN 86-93	Illinois Power Co.	Clinton 1	$50,000	-		17-Dec-86	-			(e)
EN 86-50	Kansas Gas & Electric Co.	Wolf Creek	$40,000	-	$40,000	07-Jul-86	-	06-Aug-86	30	
EN 86-22	Louisiana Power & Light Co.	Waterford 3	$50,000	$50,000	$50,000	16-Apr-86	27-Aug-86	12-Sep-86	149	
EN 86-06	Nebraska Public Power Dist.	Cooper	$50,000	-	$50,000	13-Feb-86	-	14-Mar-86	29	
EN 86-24	Nebraska Public Power Dist.	Cooper	$50,000	$25,000	$25,000	28-Apr-86	10-Oct-86	27-Oct-86	182	
EN 86-94	Omaha Public Power District	Ft. Calhoun	$15,000	-	$15,000	17-Dec-86	-	16-Jan-87	30	
EN 86-07	Pacific Gas & Electric Co.	Diablo Canyon 2	$50,000	-	$50,000	13-Feb-86	-	14-Mar-86	29	
EN 86-37	Philadelphia Electric Co.	Peach Bottom 3	$200,000	$200,000	$200,000	09-Jun-86	12-Dec-86	24-Dec-86	198	
EN 86-09	Portland General Electric Co.	Trojan	$50,000	-	$50,000	03-Mar-86	-	01-Apr-86	29	
EN 86-30	Portland General Electric Co.	Trojan	$80,000	-	$80,000	13-May-86	-	22-May-86	9	
EN 86-76	Portland General Electric Co.	Trojan	$50,000	-	$50,000	15-Oct-86	-	14-Nov-86	30	
EN 86-48	Public Service Co. of Colorado	Fort St. Vrain	$75,000	-	$75,000	07-Jul-86	-	05-Aug-86	29	
EN 86-49	Public Service Co. of Colorado	Fort St. Vrain	$65,000	-	$65,000	07-Jul-86	-	05-Aug-86	29	
EN 86-05	Sacramento Municipal Utility Dist.	Rancho Seco	$25,000	-	$25,000	05-Feb-86	-	28-Feb-86	23	
EN 86-53	Sacramento Municipal Utility Dist.	Rancho Seco	$375,000	-	$375,000	22-Oct-86	-	20-Nov-86	29	
EN 86-19	South Carolina Electric & Gas Co.	Summer	$50,000	$50,000	$50,000	15-Apr-86	17-Sep-86	17-Oct-86	185	
EN 86-70	South Carolina Electric & Gas Co.	Summer	$50,000	-	$50,000	22-Sep-86	-	17-Oct-86	25	
EN 86-69	Southern California Edison Co.	San Onofre 1	$180,000	-	$180,000	17-Sep-86	-	16-Oct-86	29	
EN 86-65	Southern California Edison Co.	San Onofre 1, 2, 3	$25,000	-	$25,000	25-Aug-86	-	25-Sep-86	31	
EN 86-52	Tennessee Valley Authority	All 9 TVA Plants	$150,000	-	$150,000	10-Jul-86	-	08-Aug-86	29	
EN 86-67	Tennessee Valley Authority	Browns Ferry 1, 2, 3	$150,000	-	$150,000	08-Sep-86	-	08-Oct-86	30	
EN 86-26	Texas Utilities Electric Co.	Commanche Peak 1, 2	$120,000	-	$40,000	02-May-86	-	02-Jun-86	31	(f)
EN 86-27	Texas Utilities Electric Co.	Commanche Peak 1, 2	$250,000	$50,000	$250,000	02-May-86	15-Dec-86	05-Jan-87	248	(a)
EN 86-68	Union Electric Co.	Callaway	$25,000	-	$25,000	09-Sep-86	-	09-Oct-86	30	
EN 86-42	Virginia Electric & Power Co.	North Anna 1, 2	$25,000	-	$25,000	27-Jun-86	-	25-Jul-86	28	

FOOTNOTES FOR FINES TABLE

(a) The utility contested $50,000 of the $250,000 fine. On August 4, 1986, the NRC re-imposed the contested portion. Thus, $200,000 of the fine was paid on August 4, 1986 and the balance on January 5, 1987.

(b) The utility contested the fine. It was subsequently withdrawn by the NRC on December 19, 1986.

(c) The utility paid half the fine on July 3, 1986, but contested the rest. After deciding that the violation did occur as originally alleged, on February 26, 1987 the NRC re-imposed the entire fine. On April 27, 1987, the utility paid the balance.

(d) Some of the information concerning this fine was provided in personal communications by Perry Robinson, Division of Enforcement, Nuclear Regulatory Commission, August 5, 1987.

(e) The fine was suspended by the NRC on April 24, 1987 pending action by the Department of Labor. See footnote (d), above.

(f) The utility paid part of the fine. The rest was suspended pending action by the Department of Labor. See footnote (d), above.

SOURCES

"Notification[s] of Significant Enforcement Action" numbered and dated as noted, Office of Inspection and Enforcement, Nuclear Regulatory Commission.

Incomplete document entitled "Civil Penalties," pp. 56 - 67, released under the Freedom of Information Act by the NRC's Office of Enforcement, (FOIA-87-407), July 22, 1987.

Other sources as noted.

THE DETERRENCE GAP:

How Inflation Has Taken the Bite Out of Health and Safety Penalties

A report by

Consumer Federation of America
and
U.S. Public Interest Research Group
The National Association of State PIRGs

February 1988

THE DETERRENCE GAP:

How Inflation Has Taken the Bite Out of Health and Safety Penalties

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The U.S. Public Interest Research Group (U.S. PIRG) is the national lobbying office for state PIRGs across the country. PIRGs are nonprofit, nonpartisan consumer advocacy organizations.

Consumer Federation of America is a coalition of over 240 national, state and local consumer organizations which together represent more than 50 million people.

INTRODUCTION

Beginning in the late 1960's, in response to growing concern over the impact of American business practices on public health and safety, Congress passed a number of health and safety laws and created new federal agencies to enforce them. For example, the National Traffic and Motor Vehicle Safety Act was passed in 1966, and the National Highway Traffic Safety Administration was established to administer it. Similarly, in 1970, the Occupational Safety and Health Administration was created. In 1972, both the Consumer Product Safety Commission and the Environmental Protection Agency came into being to enforce consumer product safety and environmental protection laws.

These laws placed upon the private sector new responsibilities expressly designed to protect public health and safety. As economically-motivated actors, businesses are naturally reluctant to comply with additional costly requirements imposed by the government. Therefore, Congress included in the statutes civil monetary penalties to deter violations of the laws. To retain their deterrent value, at a minimum these penalties must continue to exert the same financial impact that Congress intended when the penalties were enacted.

Unfortunately, far too many penalties have lost their bite over the years. As this review of the civil penalty provisions in a sample of federal health and safety statutes indicates, half of the penalties contained in those laws were enacted or last changed ten or more years ago. Because of the rapidly rising inflation of the 1970's, the value of these penalties has been significantly diluted, creating a "deterrence gap" in the ability of the law to discourage illegal behavior harmful to the public health and welfare.

METHODOLOGY

To complete this study, we reviewed 28 federal health and safety statutes administered by 9 federal agencies. Within these laws, we identified 74 civil penalty provisions. By using the Consumer Price Index, we were able to calculate what the penalties would be if adjusted for inflation as of December 31, 1987. In addition, we calculated the remaining purchasing power of these monetary penalties today.

The results are set out in the table on pages i - x. For each penalty, the table lists the following information:

(i) the relevant agency and statute name and U.S. Code citation;
(ii) a brief description of the violation being penalized;
(iii) the date of enactment or last update of the current penalty provision;
(iv) its present value if adjusted for inflation as of December 31, 1987; and
(v) the percent remaining of the original purchasing power of the penalty as a result of inflation.

RESULTS

The survey shows that, although some key environmental statutes have been updated recently, penalty provisions in far too many other statutes have not been changed since the high inflationary period of the 1970's. The survey's most glaring example of an outdated civil penalty is found in the Federal Aviation Act (FAA) -- the civil penalty for violations of FAA safety regulations has been $1,000 since 1958. Inflation has reduced the value of this penalty to one-quarter of its original worth.

One-half of the penalties surveyed were enacted or last changed ten or more years ago. Due to the rise in inflation, a penalty that was last increased ten years ago is worth only 53% of its original purchasing power. This means that the potency of half of these civil penalties has been reduced to about 50% or less of their original strength.

A few examples dramatically illustrate the shrinking value of these important law enforcement tools:

* The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was enacted in 1972 to regulate the manufacture and use of some of the most toxic substances known to science. For the past 15 years, the maximum penalty for each violation of pesticide registration and permit requirements has remained at $5,000. Due to inflation, today that $5,000 is worth only 36% of its original value, or $1800. Adjusted for inflation, the penalty would be $13,750.

* Congress established the Consumer Product Safety Commission (CPSC) in 1972 to protect the public from the unreasonable risk of injury posed by some consumer products. Again, for the past 15 years, the

maximum civil penalty for each violation of the Consumer Product Safety Act has remained unchanged at $2,000, with the maximum total penalty holding steady at $500,000. Due to inflation, these penalties are worth only 36% of their original value, or $720 and $180,000 respectively. Adjusted for inflation, these penalties would be $5,520 and $1.38 million today.

* The National Traffic and Motor Vehicle Safety Act sets safety standards for the multibillion dollar automobile industry. In 1966, Congress established a civil penalty of $1,000 for each violation of the Act, and that penalty remains in force today. Inflation has reduced the penalty's value to 28% of what it was originally, or $280. In 1974, the maximum total penalty for related violations of the Act was raised to its current $800,000, which is worth $336,000 today, or 42% of the original value. Adjusted for inflation, these penalties would be $3,560 and $1.872 million today.

* One of the biggest advances in the protection of worker health and safety was the enactment of the Occupational Safety and Health Act of 1970 (OSHA). According to a recent report by the National Safe Workplace Institute, fatality rates for workers in high-risk construction, factory and mining jobs dropped an average of 2.2% a year between 1970 and 1980. In the 1980's, the fatality rate has decreased only 0.7% each year. To stem this reduction in OSHA's ability to curb workplace deaths, the National Safe Workplace Institute has recommended increasing the statute's civil penalties.

Just to keep pace with inflation, OSHA penalties would need to be increased almost three-fold. Since the Act was passed in 1970, the civil penalties have remained constant at $1,000 per violation of workplace health and safety standards, and $10,000 per violation of the requirement to furnish a workplace free from serious health hazards. Those penalties today are worth just 34% of their value at enactment, or $340 and $3400, respectively. Adjusted for inflation, the penalties would be $2,970 and $29,700.

As a result of the shrinking value of civil penalties, deterrence has failed to keep up with the value of goods and services. Compare pesticide penalties to today's food prices. Compare CPSC penalties to the cost of consumer durables. Compare motor vehicle penalties to the price of new cars. Compare OSHA penalties to the gross national product. What you find is that the cost of goods and services has doubled since the mid-seventies while many penalties have remained unchanged. This means that the penalties have declined by approximately 50% in value, and so presumably, has their impact on deterrence.

CONCLUSION

In the vast majority of federal statutes designed to regulate economic activity, Congress has reached the common sense conclusion that penalties which deter violations are key to enforcement of the laws. For these penalties to retain the deterrent value originally intended, the penalties must exert the same economic impact on lawbreakers as they did when first enacted.

As this study shows, rising inflation has created a "deterrence gap" in which the economy has grown while penalties have stayed the same. Civil penalties without their intended financial bite render enforcement efforts toothless and ineffective.

To reverse this trend, we support the Federal Civil Penalties Inflation Adjustment Act (S. 1014), introduced by Senator Frank Lautenberg (D-NJ), which would adjust federal civil penalties to keep pace with inflation. By restoring penalties to the original value contemplated at enactment, this bill would make the law comport more closely with Congressional intent while enhancing the effectiveness of law enforcement.

Inflation has taken a big bite out of the ability of the government to enforce federal laws. To close this "deterrence gap", monetary penalties must, at a minimum, be made to keep up with inflation. Nothing less than the public health and safety is at stake.

INFLATION'S EFFECT ON HEALTH AND SAFETY PENALTIES

Statute	Violation	Most Recent Change	Current Civil Penalty	Adjusted for Inflation	% Remaining of Original Value
U.S. ENVIRONMENTAL PROTECTION AGENCY					
TOXIC SUBSTANCES CONTROL ACT (TSCA) 15 USC 2601 *et seq.*					
2615(a)	(1) Failure to comply with testing, manufacturing or processing, and disposal requirements for chemical substances	1976	Max. $25,000 per violation per day	$50,750	49%
	(2) Knowing violations of Act's requirements				
	(3) Failure to keep records, submit reports and permit access or entry for inspection				
WATER POLLUTION PREVENTION AND CONTROL ACT (Clean Water Act) 33 USC 1251 *et seq.*					
1319(d)	(for judicial determinations) Violation of provisions as per: -pollutant discharges, especially toxic pollutants or sewage sludge -adequate water quality control technology -record, report and inspection requirements -acquisition of necessary permits	1987	Max. $25,000 per violation per day	$25,000	100%
1319(g)	Administrative Civil Penalties (subdivided into Class I and Class II)				
1319(g)(2)(A)	Class I civil penalties	1987	Max. $10,000 per violation Max. total penalty $25,000	$10,000 $25,000	100% 100%
1319(g)(2)(B)	Class II civil penalties	1987	Max. $10,000 per violation per day Max total penalty $125,000	$10,000 $125,000	100% 100%

1321(b)(6)(A)	Liability for oil or hazardous substance discharging	1977	Max. $5,000 per violation	$9,500	53%
			Max. $50,000 total penalty	$95,000	53%
			(if willful, negligent or misconduct, max. penalty $250,000)	$475,000	53%
1322(j)	Sale of non-certified marine sanitation devices	1972	Max. $5,000 per violation	$13,800	36%
	Failure to equip vessel with operable certified marine sanitation devices	1972	Max. $2,000 per violation	$5,520	36%
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA) 7 USC 136 et seq.					
136(l)(a)(1)	Violation of pesticide registration and permit requirements	1972	Max. $5,000 per violation	$13,750	36%
136(l)(a)(2)	Violation by private applicator subsequent to receipt of written warning from EPA	1978	Max. $1,000 per violation	$1,770	57%
SAFE DRINKING WATER ACT 42 USC 300f et seq.					
300h2(b)(1)&(2)	Judicial determination Violation of applicable underground injection control requirements	1986	Max. $25,000 per violation per day	$26,250	95%
300h2(c)(1)	Administrative determination Violation of underground injection requirements except relating to oil or natural gas production	1986	Max. $10,000 per violation per day	$10,500	95%
			Max. total penalty $125,000	$131,250	95%
(c)(2)	Violation of underground injection requirements relating to oil or natural gas production	1986	Max. $5,000 per violation per day	$5,250	95%
			Max. total penalty $125,000	$131,250	95%
300g-3(b)	Noncompliance with drinking water regulations	1986	Max. $25,000 per violation per day	$26,250	95%
300g-(g)(3)(A)	(same as above, only in failure to comply with Administrative order)	1986	Max. $25,000 per violation per day	$26,250	95%
300i-1(c)	Tampering with public water system	1986	Max. $50,000 per violation	$52,500	95%

[300i-1(c)]	Attempted or threatened tampering with public water system	1986	Max. $20,000 per violation	$21,000	95%
300j(e)(2)	Failure to comply with order to supply water treatment chemicals	1974	Max. $2,500 per violation	$5,850	43%
300j-4(c)	Failure of water suppliers to comply with records and inspection requirements	1986	Max. $25,000 per violation	$26,250	95%
URANIUM MILL TAILINGS RADIATION CONTROL ACT 42 USC 7901 _et seq._					
7920	Violation of remedial action program requirements	1978	Max. $1,000 per violation per day	$1,770	56%
MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT (OCEAN DUMPING ACT) 33 USC 1401 _et seq._					
1415(a)	Dumping materials in ocean waters, without or in violation of applicable permits	1972	Max. $50,000 per violation per day	$138,000	36%
NOISE CONTROL ACT 42 USC 4901 _et seq._					
4910(a)(2)	Failure to meet noise emission standards	1978	Max. $10,000 per violation per day	$17,700	56%
AIR POLLUTION PREVENTION AND CONTROL ACT (CLEAN AIR ACT) 42 USC 7401 _et seq._					
7413(b)	Failure of owner or operator of a major stationary source of air pollution to comply with an EPA compliance order	1977	Max. $25,000 per violation per day	$47,500	53%
7524	Failure to meet motor vehicle emissions standards	1977	Max. $10,000	$19,000	53%
	Tampering with emissions control device on motor vehicle prior to sale and delivery	1977	Max. $10,000	$19,000	53%
	Tampering with emissions control device on motor vehicle by repair person or person who operates motor vehicle leasing or trading	1977	Max. $2,500	$4,750	53%

COMPREHENSIVE
ENVIRONMENTAL
RESPONSE
COMPENSATION AND
LIABILITY ACT
(CERCLA/SUPERFUND)
42 USC 9601 et seq.

9606(b)	Failure or refusal to comply with Presidential abatement order	1986	Max. $25,000 per violation per day	$26,250	95%
9609(a)	Class I administrative penalty for violations relating to: (A) notice (B) destruction of records (C) financial responsibility (D) settlement agreements (E) administrative orders, consent decrees or agreements	1986	Max. $25,000 per violation per day	$26,250	95%
9609(b)	Class II administrative penalty for violations relating to: (A)-(E) as above	1986	Max. $25,000 per violation per day	$26,250	95%
			Second or subsequent violation max. $75,000 per violation per day	$76,750	95%
9609(c)	Judicial assessment for violations relating to: (A)-(E) above	1986	Max. $25,000 per violation per day	$26,250	95%
			Second or subsequent violation max. $75,000 per day	$76,750	95%

RESOURCE
CONSERVATION AND
RECOVERY ACT(RCRA)
42 USC 6901 et seq.

6928(g)	Violations of hazardous waste management requirements ,	1976	Max. $25,000 per violation per day	$50,750	49%
6934(e)	Failure to comply with order from EPA when potential hazard arises	1980	Max. $5,000 per violation per day	$7,000	71%
6991e(d)(1)	Failure to notify or misinforming EPA of underground storage tanks containing regulated substances	1984	Max. $10,000 for each tank	$11,100	90%
6991e(d)(2)	Failure to meet underground storage tank requirements	1984	Max. $10,000 per violation per day	$11,100	90%

U.S. DEPARTMENT OF LABOR

MINE HEALTH AND SAFETY ACT 30 USC 801 *et seq.*					
820(a)	Violation of coal or other mine health or safety standards	1969	Max. $10,000 per violation	$31,500	32%
820(b)	Failure by operator to correct violation for which citation has been issued	1977	Max. $1,000 per violation per day	$1,900	53%
820(g)	Violation by miners of safety standards relating to smoking or the carrying of smoking materials, matches, or lighters	1969	Max. $250 per violation	$787.50	32%
OCCUPATIONAL HEALTH AND SAFETY ACT (OSHA) 29 USC 651 *et seq.*					
666(a)	Violation of requirement to furnish employees with workplace free from hazards likely to cause death or serious injury	1970	Max. $10,000 per violation	$29,700	34%
666(b)	Serious violation of workplace health and safety standards	1970	Max. $1,000 per violation	$2,970	34%
666(c)	Violation of workplace health and safety standards not of serious nature	1970	Max. $1,000 per violation	$2,970	34%
666(d)	Failure to correct a violation	1970	Max. $1,000 per violation per day	$2,970	34%
666(i)	Failure to meet posting requirements	1970	Max. $1,000 per violation	$2,970	34%

U.S. DEPARTMENT OF AGRICULTURE

ANIMALS, MEATS, AND
DAIRY PRODUCTS ACT
21 USC 101 *et seq.*

104	Importation of diseased animals	1983	Max. $1,000 per violation	$1,160	86%
117	Transportation of diseased livestock or poultry	1983	Max. $1,000 per violation	$1,160	86%
122	Violation of provisions pertaining to prevention of introduction and spread of contagion	1983	Max. $1,000 per violation	$1,160	86%
127	Violation of provisions pertaining to moving quarantined animals and live poultry	1983	Max. $1,000 per violation	$1,160	86%
134e(a)	Violation of provisions for livestock or poultry to prevent dissemination of communicable disease	1983	Max. $1,000 per violation	$1,160	86%
135a(b)	Violation of animal quarantine regulations	1983	Max. $1,000 per violation	$1,160	86%

FOOD STAMP ACT
7 USC 2011 *et seq.*

2021	Violation by retail food store or wholesale food concerns of food stamp regulations	1982	Max $10,000	$12,000	84%

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIONAL MOBILE HOME
CONSTRUCTION AND
SAFETY STANDARDS ACT
42 USC 5401 *et seq.*

5410	Violation of mobile home construction and safety standards	1974	Max. $1,000 per violation	$2,340	43%
			Max. total penalty $1,000,000	$2,340,000	43%

U.S. CONSUMER PRODUCT SAFETY COMMISSION

CONSUMER PRODUCT
SAFETY ACT
15 USC 2051 et seq.

2069	Violation of product safety standards and other statutory provisions	1972	Max.$2,000 per violation	$5,520	36%
			Max. total penalty $500,000	$1,380,000	36%

U.S. DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

NATIONAL TRAFFIC AND
MOTOR VEHICLE SAFETY
ACT
15 USC 1381 et seq.

1398	Manufacture, sale, delivery or importation of substandard vehicles; rendering inoperative devices, designs or motor vehicles	1966	Max. $1,000 per violation	$3,560	28%
		1974	Max. total penalty $800,000	$1,872,000	43%

MOTOR VEHICLE
INFORMATION AND COST
SAVINGS ACT
15 USC 1901 et seq.

1917	Violation of bumper standards requirements	1972	Max. $1,000 per violation	$2,750	36%
			Max. total penalty $800,000	$2,200,000	36%
1948	Violation of consumer information requirements	1972	Max. $1,000 per violation	$2,750	36%
			Max. total penalty $400,000	$1,104,000	36%
1990(b)	Violation of odometer requirements	1986	Max. $2,000 per violation	$2,100	95%
		1972	Max. total penalty $100,000	$2,750,000	36%

U.S. D.O.T.					
NATURAL GAS PIPELINE SAFETY ACT 49 USC 1671 et seq.					
1679a.(a)(1)	Violation of pipeline safety standards or order by Secretary	1968	Max. $1,000 per violation per day Max. total penalty $200,000	$3,320 $664,000	30% 30%
1679a.(a)(2)	Violation of safety standards for liquid natural gas (LNG) facilities or violation of financial responsiblities for LNG facilities	1979	Max. $50,000	$79,000	63%
HAZARDOUS LIQUID PIPELINE SAFETY ACT 49 USC 2001 et seq.					
2007(a)	Violation of safety standards for transportation of hazardous liquids and pipeline facilities	1979	Max. $1,000 per violation Max. total penalty $200,000	$1,590 $318,000	63% 63%
HAZARDOUS MATERIALS TRANSPORTATION ACT 49 USC 1801 et seq.					
1809	Violation of transportation of hazardous materials	1979	Max. $10,000 per violation	$21,400	63%
INTERSTATE COMMERCE ACT 49 USC 1 et seq.					
26(h)	Failure of railroad carrier to comply with installation of safety mechanisms, appliances and systems, and to report failures and accidents	1976	$250-$2,500 per violation per day	$508-$5,080	49%
BRIDGES OVER NAVIGABLE WATERS ACT 33 USC 491 et seq.					
495(b)	Violation of bridge building standards	1982	Max. $1,000 per violation per day	$1,200	84%
499(c)	Violation of drawbridge building standards	1982	Max. $1,000 per violation	$1,200	84%
502(c)	Failure to alter bridge obstructing navigation	1982	Max. $1,000 per violation per day	$1,200	84%

533	Failure to comply with General Bridge Authority and orders of Secretary of Transportation	1982	Max. $1,000 per violation per day	$1,200	84%
PORTS AND WATERWAYS SAFETY PROGRAM ACT 33 USC 1221 et seq.					
1232(a)	Violation of Act	1972	Max. $25,000 per violation per day	$69,000	36%
DEEPWATER PORT ACT 33 USC 1501 et seq.					
1514(b)(3)	Failure to comply with regulations under Act (construction and operation of deepwater ports, including marine environmental impact)	1975	Max. $25,000 per violation per day	$53,000	47%
1517(a)	Discharging of oil in a deepwater port	1975	Max. $10,000 per violation	$21,400	47%
FEDERAL AVIATION ADMINISTRATION					
FEDERAL AVIATION ACT 49 USC 1301 et seq.					
1471(a)	Violation of regulations pertaining to air transportation security, accident investigation, noise abatement, permits and tariffs, rate restrictions, certifications, registration and recordation.	1958	Max. $1,000 per violation	$3,990	25%
		1974	Max. total penalty $10,000 for each violation relating to transportation of hazardous materials	$23,000	43%
1471(c)	Conveying false information concerning alleged hijackings, threats to crew members, weapons or explosives aboard aircraft	1984	Max. $10,000	$11,100	90%
1471(d)	Unathorized carrying of arms or concealed deadly or dangerous weapons on board	1984	Max. $10,000	$11,100	90%

FEDERAL RAILROAD ADMINISTRATION					
SAFETY APPLIANCES ACT 45 USC 1 *et seq.*					
13	Using railroad car not equipped with required safety appliances	1976	$250-$2,500 per violation	$508-$5,080	49%
34	Violation of locomotive inspection provisions	1976	$250-$2,500 per violation	$508-$5,080	49%
FEDERAL RAILROAD SAFETY ACT 45 USC 421 *et seq.*					
438(B)	Violation of any railroad regulation or order under Act	1970	$250-$2,500 per violation	$742-7420	34%
FEDERAL EMERGENCY MANAGEMENT AGENCY					
DISASTER RELIEF ACT 42 USC 3121 *et seq.*					
5157(b)	Violation of disaster relief regulations	1974	Max. $5,000 per violation	$11,700	43%

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The Library of Congress

Washington, D.C. 20540

February 26, 1988

TO : Honorable Frank R. Lautenberg
Attention: Bruce King

FROM : American Law Division

SUBJECT : Constitutional Analysis of S. 1014, the "Federal Civil Penalties Inflation Adjustment Act of 1987"

This is to respond to your request for an analysis of the constitutionality of S. 1014, the "Federal Civil Penalties Inflation Adjustment Act of 1987." You suggested that the legislation might be subject to challenge as a violation of the separation of powers between the Executive Branch and the Congress, or that there may be due process violations resulting from the imposition of higher civil penalties under this legislation without proper notice. A review of the bill, however, indicates that it does not stipulate that Congress is to unilaterally control the execution of its provisions once it becomes law, and proper notice to affected parties will be provided by the relevant agencies. There appears to be no unconstitutional provisions in this bill under either of the theories suggested.

The Supreme Court recently overturned the provisions of the Gramm-Rudman-Hollings Act,[1] which directed the President to make spending cuts based on a detailed projection of federal revenues and expenditures schedule prepared by the Comptroller General.[2] Although S. 1014 includes, as does the Gramm-Rudman-Hollings Act, a provision directing the Executive to act upon as yet undetermined data, this does not violate the separation of powers scheme of the Constitution. The constitutional deficiency in the Gramm-Rudman-Hollings Act was the assignment of the development of the controlling data to the Comptroller General, who was deemed to be an agent of Congress.[3] The relevant data for S.1014 is based on the Consumer Price Index, which is generated by the Department of Commerce, an agency of the Executive Branch. Thus, the bill does not allow Congress to retain the executive power to determine the level of civil penalties.[4]

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[1] Balance Budget and Emergency Deficit Control Act of 1985, 2 U.S.C. §901 et seq.).

[2] *Bowsher v. Synar*, 106 S. Ct. 3181 (1986).

Further concerns were expressed about whether proper notice would be provided to the public of the new penalties, so as not to violate the due process rights of persons upon whom the fines are imposed.[5] Under the Federal Register Act,[6] publication serves as constructive notice to the public of the content of the notice.[7] As the bill provides that the heads of the agencies will list specific schedules of penalties, and that enforcement of such penalties will not occur until after publication, any individuals who are later fined will have had constructive notice of the penalties against them.[8]

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[3] Id. This finding was based on the Congressional power to remove the Comptroller General without impeachment or legislation. Under the Act, the President would then act upon the data developed by the legislative branch.

[4] There are numerous statutes administered by the Executive Branch which refer to the Consumer Price Index to adjust benefits for inflation. See e.g. 5 U.S.C. § 8340 (civil service retirement, cost of living adjustments).

[5] U.S. Const. Amend. V. This analysis is made assuming that the version of the bill examined, which requires that the penalties would have become effective starting after December 31, 1987, will be amended to afford the agencies time to publish notice of the proposed rates in the Federal Register.

[6] 44 U.S.C. §1507 (1982)

[7] Toledo, P. & W. R.R. v. Stover, 60 F. Supp. 587 (D.C.Ill. 1945).

Kenneth R Thomas

Kenneth R. Thomas
Legislative Attorney
American Law Division

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[8] It should be noted that civil penalties under federal statutes may be expressed in ranges of permissible fines. Thus, the effect of this bill in those cases would be to change the upper and lower limits of fines permissibly levied.

ENVIRONMENTAL DEFENSE FUND

1616 P Street, NW
Washington, DC 20036
(202) 387-3500

February 25, 1988

Senator Frank Lautenberg
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Lautenberg:

The Environmental Defense Fund ("EDF") supports passage of S. 1014 (Federal Civil Penalties Inflation Adjustment Act of 1987) and S. 1015 (Federal Criminal Fines Inflation Adjustment Act of 1987). These bills would increase civil and criminal monetary penalties based on the effect of inflation. In the environmental arena, these legislative initiatives would be particularly important since non-compliance with environmental statutes is increasingly prevalent. Indeed, at least in some cases, it apparently has been more cost-effective for a party to violate an environmental statute and pay the applicable penalties than for it to comply with applicable requirements. Adjusting penalties per the rate of inflation would result in greater compliance and would deter those who otherwise would violate and pay the consequences. Moreover, the increased revenues that would result from active enforcement of various statutes' provisions would go toward reducing the nation's deficit. For these reasons, we support this "win-win" approach to increased environmental protection.

Thank you for your attention.

Sincerely,

Bruce S. Manheim, Jr.
Wildlife Program

20

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The National Safe Workplace Institute

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Suite 1501
Chicago, Illinois 60602
Telephone: 312/641 0690

February 11, 1988

Mr. Bruce King
Office of Senate Frank Lautenberg
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. King:

I appreciated the opportunity to speak with you about Senator Lautenberg's legislation, S. 1014, which would index all civil penalties to inflation (or other appropriate index).

The National Safe Workplace Institute endorses S. 1014. As you may know, the Occupational Safety and Health Administration--the regulatory body with which we are most concerned--has used the same penalty levels since 1971. If penalty levels had been adjusted for information, penalty levels would be at least three times the level they are today. Economic studies demonstrate that existing penalty levels do not provide the deterrent effect intended by Congress when the OSHAct was passed in 1970. Moreover, low penalty levels encourage firms, particularly in the construction industry, to assume certain risks because penalty costs are less than the cost of doing a job safely. Examples are trenching and the misuse of scaffolds.

Enclosed is information which you may find useful. The Institute would be most pleased to testify at your hearing on S. 1014 which will occur on February 29 or to submit a statement in support of this legislation. Please let us know if we may be of further assistance to you.

Sincerely,

Joseph A. Kinney
Chairman

enclosures

An Independent Research, Education, Intervention and Litigation Organization Devoted to Safe Workplaces.

Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

February 29, 1988

Senator Frank Lautenberg
717 Hart Senate Office Building
Washington, D.C. 20510

Re: S. 1014 or Similar Legislation to Index
Monetary Penalties to Inflation

Dear Senator Lautenberg:

On behalf of the Natural Resources Defense Council, Inc. ("NRDC"), we write to express support for S. 1014, legislation to provide an automatic mechanism to increase civil penalties provided by all federal statutes on a periodic basis to account for inflation. We also wish to offer whatever assistance NRDC may be able to provide during Congress' deliberations on this meritorious proposal.

Monetary penalties are indispensable for enforcing federal laws, including -- or perhaps especially -- environmental statutes. NRDC has learned this lesson from experience. Since 1982, NRDC has devoted substantial effort to enforcing the Clean Water Act through citizen actions. Although that statute has been on the books for over 15 years and despite continuing enforcement by government and by citizens, NRDC continues to encounter companies that flagrantly disregard the law. Soon NRDC will go to trial in a case in which the court has already found over 1200 violations; within the past two weeks, NRDC served notice on another company that has admitted to over 1500 NPDES violations in less than 3 1/2 years.

Under current law, inflation causes the real value of monetary penalties to decrease. If penalties should change at all, penalties should increase to reflect the additional culpability that attaches to disregard of a statute that becomes older, better known, and complied with by one's competitors. A gradual, unintended decrease in monetary penalties for violation of environmental statues is counterproductive for obtaining compliance and inequitable to those companies who live within the law. For these reasons, NRDC generally supports the concept of indexing monetary penalties to inflation.

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Senator Lautenberg
February 29, 1988

We wish to draw your attention to two technical concerns which we believe should be addressed in S. 1014. First, any indexing plan must be unambiguous about establishing the date when a particular penalty was enacted. In the current bill, the formula for existing monetary penalties is based on the "calendar year in which such penalty amount was last determined under law"; future monetary penalties will be included in the indexing plan when "enacted into law." These formulations may create an ambiguity when a statute is reauthorized without a substantive change in the amount of monetary penalty. This ambiguity must be eliminated to avoid a situation in which reauthorization resets the monetary penalty to the original figure, thus undermining the purpose of the bill.

Second, many federal environmental statutes encourage states to take responsibility for administering and enforcing the law. For example, under the Clean Water Act states may receive delegation from EPA to administer the NPDES program; under the Clean Air Act, the federal government will enforce the statute in a state unless the state adopts an adequate state implementation plan. Under these statutes, states must demonstrate the legal authority to enforce the law, including the authority to impose the same penalties provided in federal law. The equivalence between federal and state enforcement is an important principle of intergovernmental cooperation under these and other environmental statutes. This principle should not be abrogated by S. 1014 or other civil penalty enhancement legislation. Instead, S. 1014 should require that states implementing federal environmental statutes also index monetary penalties for violations of those statutes to account for inflation under state law.

We commend you for introducing S. 1014. NRDC looks forward to the opportunity to assist your committee and the Congress as you consider this important legislation.

Yours truly,

Jim Simon
Jim Simon
Senior Project Attorney

Janet S. Hathaway
Janet S. Hathaway
Senior Project Attorney

WAYNE PIERCE, GENERAL TREASURER
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

101 CONSTITUTION AVE., N.W.
WASHINGTON, D. C., 20001

February 29, 1988

Honorable Frank R. Lautenberg
717 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Lautenberg:

I am writing in support of S.1014 which would provide automatic indexing to inflation of all civil penalties, including those imposed on violators of federal health and safety laws which protect American workers. Civil penalties which are set in federal statutes have, in many cases, become fiscally outdated. What was a forceful statement of the price to be paid for a federal civil violation, is now in many instances barely a slap on the wrist. Inflation has cut the cost of penalties under the Occupational Safety and Health Act by 65% since 1970. Similar inflationary pressure has deflated the impact of airline safety penalties by 75%.

Our union has utilized the OSH Act in many plant and construction sites throughout the country. One of our field representatives is currently party representative for workers seeking a safe workplace at the General Dynamics facility in Quonset Point, Rhode Island. Numerous violations by General Dynamics are alleged, and will be decided through hearing. Even if General Dynamics is found guilty of violations, however, the maximum statutory penalty falls far short of the deterrent necessary to give meaning to the statute's purpose.

We urge you, in the interest of promoting justice and preserving the integrity of these important statutory protections, to see that S.1014 is enacted. We also congratulate you on sponsoring this rational approach to a vexing problem which cannot be effectively resolved through piecemeal legislative reform.

Sincerely,

Wayne Pierce
GENERAL TREASURER

WP/mkd